

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA                   \*       Case No. 17-CR-00281 (ERK)  
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  \*       Brooklyn, New York  
  \*       January 11, 2018  
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CARLOS RICHARD MARTINEZ,                   \*  
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TRANSCRIPT OF CRIMINAL CAUSE FOR JURY TRIAL  
BEFORE THE HONORABLE EDWARD R. KORMAN  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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1 (Proceedings commenced at 10:16 a.m.)

2 THE CLERK: We're here on USA v. Carlos Martinez, 17-  
3 cr-281.

4 THE COURT: Do you want to come up?

5 MS. ARGENTIERI: Nicole Argentieri and Nadia Shihata  
6 for the United States.

7 Good morning, Judge.

8 MR. RICCO: Good morning, your Honor.

9 Anthony Ricco for Carlos Martinez, who just came in  
10 the room and your Honor, I am joined today by associate  
11 counsel, Carlos Santiago and Mr. Rollock will be here. He just  
12 stepped away.

13 MS. ARGENTIERI: Judge, can we approach at sidebar?

14 THE COURT: There's no jury here. Do you still need  
15 a sidebar?

16 MS. ARGENTIERI: Judge, Mr. Ricco has advised us that  
17 he intends to get into the subject matter area that we were  
18 sort of having a limited dispute about. In order to sort of  
19 argue what we would like to argue, we're going to have to get  
20 into the facts of a case that's currently indicted in this  
21 district and a case that is an ongoing investigation.

22 And I just note for the record, there are many  
23 members of the Bureau of Prisons behind us and I would like not  
24 to out those details in front of the whole courtroom. So  
25 that's why I have asked to approach.

1 (Discussion held at sidebar.)

2 MS. ARGENTIERI: So Maria was witness to two, and a  
3 participant in, misconduct by other guards in her time at the  
4 MDC.

5 THE COURT: Participant?

6 MS. ARGENTIERI: Not a participant. Let me just  
7 explain. So there's one incident that is currently charged in  
8 a case before Judge Matsumoto in Eugenio Perez. He's actually  
9 the defendant's cell-mate. And in that incident, Perez  
10 attempted to have Maria perform oral sex on him when she was  
11 cleaning the lieutenant's office. She managed to escape and  
12 the woman she was cleaning with went into the office and then  
13 when Maria walks back into the office like a short time later,  
14 Perez is forcing that woman to perform oral sex on him. So  
15 it's kind of one incident.

16 I think Mr. Ricco, the way he explained it the other  
17 day, believes it's actually two separate incidents and it  
18 wouldn't violate 412.

19 MR. RICCO: That's not what Mr. Ricco said.

20 THE COURT: Don't cut anybody off.

21 MR. RICCO: I'm sorry.

22 THE COURT: I listen to everybody.

23 MS. ARGENTIERI: So whether or not it's one incident  
24 or two incidents, it's a subject that Mr. Perez -- Lieutenant.  
25 Perez is charged with that, not as just sexual abuse of a ward

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1 which is, you know, what we call consensual sex in jail.

2 THE COURT: He's charged with?

3 MS. ARGENTIERI: He's charged with --

4 THE COURT: You have to tell me which one you're  
5 talking about at the moment.

6 MS. ARGENTIERI: Perez, the one I just described. So  
7 Perez is charged with forcing that woman to perform oral sex --  
8 he's charged with forcing that woman, using fear, to perform  
9 oral sex on him and it's not charged, I think the way it's been  
10 portrayed earlier as like consensual sex. We all know if it  
11 meets can consent, we can charge that but it's actually charged  
12 using fear.

13 THE COURT: No, no, let's be clear. For certain sex  
14 offenses charges, there's no consent --

15 MS. ARGENTIERI: Agreed.

16 THE COURT: -- where the principal charges where  
17 you've used three separate statutes or more --

18 MS. ARGENTIERI: Four.

19 THE COURT: -- it's got to be done with force.

20 MS. ARGENTIERI: Force.

21 THE COURT: And so we get away -- you know, force  
22 means you don't presume consent.

23 MS. ARGENTIERI: There's --

24 THE COURT: So, you know, you have one -- I forget  
25 the name of the charge, but you have one of the charges (e)

1 where you write about that consent -- a prisoner can't consent.

2 MS. ARGENTIERI: He's charged with using fear. It's  
3 not just the lowest charge and I don't mean to refer that way  
4 because it's a serious charge. So he's charged --

5 THE COURT: You don't need to.

6 MS. ARGENTIERI: I know. I'm sorry. I am just --

7 THE COURT: We're talking about it, I suppose, in  
8 terms of, you know, what the sentence exposure is.

9 MS. ARGENTIERI: So he's charged with that, Judge,  
10 and I think that if we start asking -- if the defense starts  
11 asking Maria, like did you see another lieutenant in the  
12 lieutenant's office having an inmate perform oral sex on him,  
13 we should fairly be able to get into the fact that that inmate  
14 -- first of all, I think it's irrelevant to the charges against  
15 Mr. Martinez. Whether or not other guards were engaged in  
16 misconduct is not the subject of this trial.

17 And honestly, Judge, it could never be because we're  
18 investigating a lot of misconduct at the MDC and we're not  
19 bringing all of that in at this trial. It comes down to this  
20 is a crime committed against one woman. No one else was there  
21 when it happened. It's not about all the other things that  
22 could have been happening at the MDC and I feel if we make this  
23 trial about that, we're going to have under 403, juror  
24 confusion. It's going to become a trial within a trial and we  
25 should be able to elicit through our case agent that Eugenio

1 Perez is under indictment for exact that act and there's a  
2 second act that Mr. Ricco has advised us he wants to get into.

3 THE COURT: Should we do one at a time?

4 MS. ARGENTIERI: Let's do that one first. Okay.

5 MR. RICCO: Judge, all of the arguments that the  
6 prosecution advanced for why I want to do this, is not why I  
7 want to do it.

8 THE COURT: Okay.

9 MR. RICCO: And I don't -- they're right about all of  
10 that. That has nothing to do with this. They brought out  
11 through this witness, cameras, that sexual acts take place in  
12 certain places in the jail. They brought out that their  
13 witness speaks to the other women in the jail, about going to  
14 the SHU. Spoke to them about Maria's sexual contact.

15 So what we want to bring out is a fact that they've  
16 already brought out which is on one occasion, you the witness,  
17 Maria, you were by the room and you looked into the room and  
18 you saw a person engaged in a sexual act in that room. There  
19 was no cameras in that room. No, that's been her testimony.  
20 That's it with that respect to that.

21 With respect -- are we taking one at a time?

22 THE COURT: Yeah.

23 MR. RICCO: That's it. And in so doing that, Judge,  
24 I don't violate --

25 THE COURT: So it's a --

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1 MR. RICCO: -- 412.

2 THE COURT: That's true. But what -- it's certainly  
3 not a violation of 412 and the relevance -- I think I asked you  
4 this the other day, with respect to this particular incident,  
5 what inference do you want the jury to draw from that?

6 MR. RICCO: The inference that I want the jury to  
7 draw from that is that there are places in the jail that don't  
8 have cameras and people do, in fact, engage in conduct in those  
9 areas.

10 THE COURT: So --

11 MR. RICCO: And that it is discussed amongst the  
12 inmates and --

13 THE COURT: And this incident happened in a room  
14 where there was no windows?

15 MR. RICCO: No -- I meant cameras.

16 THE COURT: There as no cameras?

17 MR. RICCO: That's correct, Judge.

18 THE COURT: Well, I didn't understand. So this was a  
19 room that had no cameras.

20 MR. RICCO: Right. I just --

21 THE COURT: You just told me that --

22 MR. RICCO: They find the places that don't have  
23 cameras.

24 THE COURT: Right.

25 MR. RICCO: And their theory is that particular room



1 is one of those rooms. That's a part of their case. For them  
2 to say it's irrelevant for us to bring it in, it's a part of  
3 their case.

4 THE COURT: No, no, but what -- I still don't  
5 understand what inference you want the jury to draw. I gather  
6 from --

7 MR. RICCO: Oh.

8 THE COURT: -- I gather from Judge Cogan's in limine  
9 rulings that the government wants to bring in an instance of, I  
10 guess consensual sex, that occurred in this room without  
11 cameras, room without windows -- I forget which -- I think  
12 cameras and in order to show why he would use that room --

13 MS. ARGENTIERI: Right.

14 THE COURT: -- that doesn't bother you. That's  
15 another sexual act in prison but --

16 MS. ARGENTIERI: That's a consensual act between --  
17 and I don't mean to interrupt you, Judge.

18 MR. RICCO: Judge, I'm going to pose this to you.  
19 If --

20 THE COURT: Yesterday's was clearly relevant because  
21 another inmate told her that she had sex, apparently forcible  
22 sex with a guard and that she was disturbed by the fact that  
23 the woman didn't report the second guard.

24 MR. RICCO: Right.

25 THE COURT: To me that's relevant because it goes to

1 if she was disturbed that the other woman didn't, then why  
2 didn't she? I mean, I think that --

3 MR. RICCO: Judge --

4 THE COURT: -- that's a fair inference. She said she  
5 was afraid bad things would happen to her, yet she was angry  
6 with the other woman --

7 MR. RICCO: And, Judge --

8 THE COURT: -- about not reporting that. So I  
9 thought that was clearly relevant.

10 MR. RICCO: And, Judge, in the 3500 material, what  
11 Maria says that when she sees this going on, she is not  
12 surprised at all. No, no, she says that she was surprised.  
13 She says she was surprised.

14 THE COURT: No, no.

15 MR. RICCO: So now --

16 THE COURT: No, I hate doing things this way. One of  
17 the things I've learned, and I did it yesterday with the  
18 question that I gave to you is I like to hear the questions put  
19 and the answer, and then I can do it in context.

20 MR. RICCO: Well, I'm a long way --

21 MS. ARGENTIERI: She finished with --

22 MR. RICCO: -- I'm a long way. You don't want me to  
23 -- hold on -- you, go ahead.

24 THE COURT: You started to say you're a long way.

25 MR. RICCO: Judge, I'm a long way from those

1 questions. I have a big buildup to them. I can stop way  
2 before that and let you know that's where I am.

3 Judge, the other situation is a woman who is going to  
4 testify here and the same question will be asked, you had the  
5 occasion to go by this same room and you observed another  
6 officer in there squeezing a woman's buttocks and grabbing her  
7 vagina area. This again was not an area where there was a  
8 camera.

9 Now that woman is testifying here. This is also the  
10 same person that she said gave her the advice about not to go  
11 to the SHU, gave her the -- that she is in the immigration  
12 together with and they're discussing the cameras and the places  
13 and what to do and how to do it. That witness is also going to  
14 say that she gave her advice, don't, don't file it. Leave it  
15 alone. Ride it out.

16 And it just seems to me, Judge, that in fairness, we  
17 should be able to bring out that this person is giving her  
18 advice but their advice goes -- it's not limited to just what  
19 the government wants to say here. It involves where these  
20 cameras are. They've discussed it. It's in the 3500 material.

21 THE COURT: Well they propose, whether they go  
22 through with it or not, to call a witness who is going to  
23 testify that they had consensual sex with this defendant.

24 MR. RICCO: And, Judge, I don't --

25 THE COURT: And the theory, or at least one of the

1 theories Judge Cogan said he would admit it, was because it  
2 showed that this place was chosen as -- it's consistent with  
3 the notion that that's why he would do it from that room.

4 MR. RICCO: That's their theory of the case, Judge.  
5 And --

6 MS. ARGENTIERI: And, Judge, there are going to be a  
7 number of witnesses --

8 MR. RICCO: Go ahead. I'm sorry.

9 MS. ARGENTIERI: I'm sorry, I just --

10 MR. RICCO: No, no, you go right ahead.

11 MS. ARGENTIERI: You spend a lot of time and I just  
12 would like to respond --

13 MR. RICCO: It doesn't matter. You had -- like I  
14 said, go ahead --

15 THE COURT: Go ahead.

16 MS. ARGENTIERI: So, Judge --

17 THE COURT: Actually, so far I don't see why any of  
18 this can't be discussed in front of the jury --

19 MS. ARGENTIERI: Because --

20 THE COURT: Not in front of the jury, I'm sorry, in  
21 open court.

22 MS. ARGENTIERI: Because, Judge, the 3500 material  
23 for that trial hasn't been turned over. They don't know that  
24 these -- Perez does not -- actually Maria's testimony is -- the  
25 3500, is subject of the protective order. Perez is not

1 supposed to know what she would say or who the other witnesses  
2 would be against him and there are a number of people in the  
3 courtroom who have reported back to him and that was my  
4 concern.

5 I'm sorry, I just wanted to continue to address some  
6 stuff.

7 MR. RICCO: Yeah, but you know --

8 MS. ARGENTIERI: I think that --

9 MR. RICCO: -- Judge, I wanted to address that  
10 concern and I said to the government, I could ask my questions  
11 on a way such that it doesn't identify the person or anything.  
12 They said they weren't interested.

13 MS. ARGENTIERI: Judge, I understand that everyone  
14 has to have a chance to speak and I understand that I am a  
15 woman with a tone but I would really like to be able to just  
16 speak for a second.

17 MR. RICCO: I'm not going to touch that.

18 MS. ARGENTIERI: So it's just in the same age having  
19 -- I'm sure that's not the sentiment of any male attorneys, so  
20 he --

21 MR. RICCO: I'm black person and I have problems, too  
22 but they have nothing to do with what we're here for.

23 MS. ARGENTIERI: -- he can elicit where the cameras  
24 are in the jail without --

25 THE COURT: I'm sorry.

1 MS. ARGENTIERI: He can elicit that inmates knew  
2 where there were no cameras in the jail. He can elicit that  
3 without getting into people having consensual sex in those  
4 areas. We're calling a number of BOP people, including  
5 lieutenants. He can elicit from them where there are no  
6 cameras in the jail.

7 And even to get into that the inmates talked about  
8 that there were areas and no cameras, there's no reason why to  
9 get that in, you need to get into the fact that Perez forced  
10 someone to perform oral sex on him. And I do think it's going  
11 to create a trial within a trial and that it's irrelevant  
12 because under -- I think the government should then be able to  
13 prove out that he's under indictment, that he's sharing a cell  
14 with the defendant and that we did do something about that.  
15 And that we found that case and investigated it.

16 And then the Nunez thing, which is -- who is the  
17 guard that groped one of our witness' vaginas, under 412, Mr.  
18 Ricco, I don't think can really ask her about that because it's  
19 another sexual act, so it would be precluded. He's trying to  
20 get it in through this witness and it's just not relevant to  
21 whether or not Martinez --

22 THE COURT: No, 412, I thought deals with --

23 MS. ARGENTIERI: I'm sorry.

24 MR. RICCO: It deals with the victim, Judge.

25 MS. ARGENTIERI: But it's just --

1 THE COURT: -- with the victim's priors.

2 MS. ARGENTIERI: With the victim's priors. And so my  
3 point is when Nunez touched the vagina of one of our witnesses  
4 and so I don't think under 412, Mr. Ricco, could ask her about  
5 it, so he is trying to get it in through this witness.

6 But who is on trial here today, Judge? It's Carlos  
7 Martinez, who is accused of raping Maria when no one else was  
8 around.

9 THE COURT: No, no, no. We're getting -- I can't do  
10 this this way. First of all, 412, I don't think what you said  
11 just now about 412 is accurate.

12 MR. RICCO: And, Judge, I am not bringing out that  
13 she witnessed a forcible sexual act like she is saying. I'm  
14 not getting into that.

15 MS. ARGENTIERI: But we would want to get into that.

16 MR. RICCO: Well, that's your decision.

17 MS. ARGENTIERI: Because he --

18 MR. RICCO: Wait a second.

19 MS. ARGENTIERI: -- is going to act like it's  
20 consensual.

21 MR. RICCO: You're a woman -- wait a second. You're  
22 a woman. You have a high-toned voice but let me speak. I'm an  
23 African American and I speak slow. Okay.

24 MS. ARGENTIERI: You know --

25 MR. RICCO: Okay? It's been ridiculous.

1 MS. ARGENTIERI: I can take it. I have been taking  
2 it. It's fine.

3 MR. RICCO: Right, so --

4 MS. ARGENTIERI: But I think the point is that it's  
5 relevant and we would want to prove that it's a forced act. He  
6 can't just elicit it like it's an essential act because are  
7 going to then want to prove --

8 MR. RICCO: Judge?

9 MS. ARGENTIERI: -- that it was a forced act, so they  
10 understand that we did something about it and the man is under  
11 indictment. And I think --

12 MR. RICCO: Okay. I don't have an objection to that.

13 MS. ARGENTIERI: But I think that's --

14 MR. RICCO: And I'm the person that would suffer  
15 that.

16 MS. ARGENTIERI: But I --

17 MR. RICCO: If that's what they want to do, I don't  
18 have an objection to that --

19 MS. ARGENTIERI: But that is --

20 MR. RICCO: -- because, Judge, that is a litigation  
21 tactic. We just want to bring out a point that they brought  
22 out, that there are off-camera spots here. The government is  
23 not the only party to this case that can prove-up whether  
24 that's true or not or how.

25 MS. ARGENTIERI: Right.



1 MR. RICCO: And what they want to do is they want to  
2 bring it out in their way and then preclude us from asking any  
3 questions about it.

4 THE COURT: Well, I can't -- you know, I have a  
5 problem here. I like to listen to the testimony that he wants  
6 to elicit before I rule and I can't -- I find it difficult to  
7 do it this way.

8 MS. ARGENTIERI: Okay. I just think --

9 THE COURT: And if you want to tell him how he could  
10 sort of clean it up, so that it would protect your interests.

11 MS. ARGENTIERI: But I think that once he asks the  
12 question, did you observe the other woman giving oral sex to a  
13 lieutenant in the office, the cat is out of the bag, right?  
14 They said that before the jury and then through -- and then  
15 what, we have to prove -- then we're going to have to try the  
16 Perez here.

17 THE COURT: I don't understand why.

18 MS. ARGENTIERI: Because the jury --

19 THE COURT: Is it false?

20 MS. ARGENTIERI: He's going to present it as if it  
21 were consensual and it wasn't consensual.

22 MR. RICCO: I am not presenting it as if it was  
23 consensual. Why do you keep saying that?

24 THE COURT: He's just going to say --

25 MR. RICCO: It was act.

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1 THE COURT: And you're not going to elicit whether it  
2 was consensual or not.

3 MR. RICCO: That's right, Judge. Nor -- nor --

4 MS. ARGENTIERI: We're good with that.

5 MR. RICCO: -- excuse me -- nor am I going to  
6 identify the people. Judge, my concern when the government  
7 told me about their case, I thought about it and my concern was  
8 that their witness would be compromised and so in the next  
9 trial, someone would cross and say well, you didn't bring that  
10 up in this other trial but with this record saying that it's a  
11 limited examination, there's no prejudice to the government.

12 THE COURT: So tell me, answer the question --

13 MR. RICCO: We'd lead up to questions about the jail,  
14 the circumstances of cameras and then I would ask about the  
15 second floor. Are there cameras. The questions would be, are  
16 you aware of whether or not other people have engaged in sexual  
17 acts in the jail? She's testified to that on direct. She is  
18 going to say yes. And the second floor --

19 THE COURT: And the government is going to introduce  
20 it too.

21 MR. RICCO: And it is part of the record and the  
22 question is, in that area where you said there was no cameras,  
23 have you ever seen a person in there in regards to sexual acts?  
24 Have you discussed with other inmates sexual activity taking  
25 place outside of the purview of the cameras? According to the

1 3500 material, she is going to say yes, that's it.

2 MS. ARGENTIERI: How is that relevant?

3 MR. RICCO: I don't see how that's a mini trial.

4 MS. ARGENTIERI: I don't understand how that's  
5 relevant.

6 THE COURT: Well, it's not a mini trial. Let's deal  
7 with one at a time here. So what is the relevance of that? I  
8 mean, you want to prove what?

9 MR. RICCO: Judge, the relevance --

10 THE COURT: I mean, that there's no -- you can  
11 certainly prove that -- well, the government's case is that the  
12 sexual acts took place in this particular place because there  
13 were no cameras.

14 MR. RICCO: Right.

15 THE COURT: And what is it that you want to show that  
16 -- I thought you want to show that sexual acts took place where  
17 there was what?

18 MR. RICCO: That place and in other places where  
19 there are no cameras and that this was an issue --

20 THE COURT: Well, what's the relevance of that?

21 MR. RICCO: It's relevant, Judge, because the witness  
22 is saying that the only issue that she talked about her fellow  
23 detainees with was that if she reported something, that she  
24 would go to the SHU and the --

25 MS. ARGENTIERI: I'm sorry.

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1 MR. RICCO: That's okay. And that's false. Now I  
2 didn't know that when we made these motions because I didn't  
3 have the 3500 material. But having reviewed the 3500 --

4 THE COURT: So you say that's false but how does this  
5 prove that that's false?

6 MR. RICCO: Because the witness will testify that  
7 these acts, the two that I am referring to and one other, that  
8 doesn't involve a staff person, was done outside the cameras  
9 and they discussed it and --

10 THE COURT: So it was done in a place where there  
11 were no --

12 MR. RICCO: Cameras.

13 THE COURT: So that rebuts the argument that somehow  
14 -- and those were forcible?

15 MR. RICCO: Judge, I don't know if they were  
16 forcible. They say that they were forcible.

17 THE COURT: So there were forcible rapes that took  
18 place in rooms where, that there were cameras?

19 MR. RICCO: One -- where there are no cameras, Judge.

20 THE COURT: Well, that's what --

21 MR. RICCO: That's just the lieutenant's room. It's  
22 on the second floor and another act took place downstairs in  
23 the basement involvement someone but they discussed it, Judge.  
24 And my concern is this --

25 THE COURT: And so that, as far as I could see, up

1 until about what you're about to say can be done by a  
2 stipulation so far.

3 MR. RICCO: I'm okay with that, Judge. I am okay  
4 with it. I think the fact of the matter is that --

5 THE COURT: I know but you started to say after that  
6 which can be done by a stipulation, what else do you want?

7 MR. RICCO: Do you mean other than that on this  
8 subject? Nothing.

9 MS. ARGENTIERI: I'm sorry, the stipulation is to  
10 what? That there were no cameras in the lieutenant's office?

11 THE COURT: No. Say again what you were going to --

12 MR. RICCO: Judge, this is --

13 THE COURT: What --

14 MR. RICCO: -- a two-prong thing. Their witness has  
15 said that the reason why she didn't report this is because she  
16 didn't want to go to the SHU.

17 THE COURT: Okay.

18 MR. RICCO: And she got that advice from inmates.  
19 She is -- they also have brought out that Maria has discussed  
20 being penetrated, having sexual contact with Martinez with  
21 three -- three women in particular. One of those women is  
22 testifying here and Judge, my position is that the discussion  
23 about the B pill, about the cameras, about what happens in the  
24 room is not limited to what the government has put forward.

25 That the conversation is about where the cameras are

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1 and what the people do away from the cameras. So then what do  
2 you want to --

3 MR. RICCO: And I want to --

4 THE COURT: What the cameras are, of course, could be  
5 stipulated to and that there are places -- and you also want to  
6 show that these things took place where?

7 MR. RICCO: In that office and one took place  
8 downstairs. That's all the 3500 material says, it took place  
9 downstairs. But what is significant for me is that the  
10 discussion amongst the women is not limited to, oh, he  
11 penetrated you. Well you don't want to get into trouble and go  
12 to the SHU. No, Judge. They're discussing where the cameras  
13 are, sharing of information about the officers, and how to get  
14 around them and what to do when you get caught. Don't say  
15 anything. Don't get --

16 THE COURT: How to get around what?

17 MR. RICCO: How to get around the cameras. How to  
18 avoid the cameras. So, for example --

19 THE COURT: How they could avoid the cameras?

20 MR. RICCO: How do they avoid the cameras. For  
21 example, during they direct examination, I'm going into this,  
22 their witness said she was in the bathroom and that a woman  
23 named LaMenore came in -- not -- a woman came in.

24 MS. ARGENTIERI: Lamenore.

25 MR. RICCO: -- a woman came into the bathroom and

1 that she -- and came into her stall. She told her get out of  
2 my stall because Martinez can see us, okay?

3 I want to bring out, Judge, that there's no cameras  
4 in the bathrooms. There's no cameras there. This --

5 THE COURT: You could ask whether there's --

6 MR. RICCO: I could, sure.

7 THE COURT: -- they could stipulate to that, too.

8 MR. RICCO: Well, I am going to ask that, Judge.

9 There's no cameras in the bathroom and that the whole  
10 testimony, Judge, about that -- that the whole subscribing or  
11 limiting of the testimony about cameras and how they apply is  
12 not limited to what the government has brought out on their  
13 direct. That they talk -- those two same individuals have  
14 talked about where to go in the building to have sex away from  
15 the cameras.

16 THE COURT: And does Maria talk about that, too?

17 MR. RICCO: Yes, one of those instances, according to  
18 the 3500 material.

19 THE COURT: I don't know why he can't ask that  
20 question.

21 MS. ARGENTIERI: Judge, I think that's a  
22 mischaracterization of the 3500 material but I also think --

23 MR. RICCO: No, but Judge --

24 THE COURT: Well, you see, this is why I can't do  
25 this this way. I can't --

Sidebar

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1 MS. ARGENTIERI: But I --

2 THE COURT: -- have you arguing about what the  
3 witnesses are going to say without having -- without doing  
4 exactly what I did yesterday. If you want, we can do this  
5 during lunch hour --

6 MR. RICCO: Judge, I will --

7 THE COURT: -- when the courtroom is cleared.

8 MR. RICCO: I will stay away from this. If I am  
9 getting the question about -- the last question, I am going to  
10 raise that now, about the bathroom, that was part of the  
11 direct. But with respect to anything that wasn't part of  
12 direct around my four questions, I'll save them. I'll save  
13 them until after lunch. I won't do them.

14 THE COURT: Okay.

15 MR. RICCO: Okay?

16 MS. ARGENTIERI: Okay, thank you, Judge. Thanks for  
17 hearing us out.

18 MR. RICCO: Thank you.

19 (Discussion concludes at sidebar.)

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Cross - "Maria" - Ricco

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1 THE COURT: Bring the jury in.

2 THE CLERK: Okay.

3 Mr. Ricco, are you ready?

4 MR. RICCO: I am.

5 THE CLERK: All rise.

6 (Jury enters courtroom.)

7 THE CLERK: Please be seated.

8 Mr. Ricco?

9 MR. RICCO: Thank you.

10 THE CLERK: The witness is reminded she is still  
11 under oath.

12 THE WITNESS: Okay.

13 THE COURT: Again, I give you these explanations,  
14 ladies and gentlemen, for the delays because I don't want you  
15 think I keep you in the jury room for no reason. As I told  
16 you, sometimes legal issues come up that I have to deal with  
17 outside of your presence. It helps make the trial go faster  
18 while you're here. I was here. Okay.

19 MR. RICCO: Okay.

20 CONTINUED CROSS-EXAMINATION

21 "MARIA", Previously Sworn

22 BY MR. RICCO:

23 Q Good morning.

24 A Good morning.

25 Q I wanted to go back to the subject before I -- a couple of

Cross - "Maria" - Ricco

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1 subject matters before we get to immigration. Yesterday I  
2 asked you questions about the different ways you could have  
3 reached out to tell the prison officials or staff that an  
4 officer was forcing, threatening you and putting you in fear to  
5 having sex. You remember those questions, right?

6 A Yes.

7 MR. RICCO: Okay. Can we put up Government's Exhibit  
8 104-C, please. Can I have 104 that's into evidence, published  
9 to the jury?

10 Q Now, while we're getting the photograph up, during your  
11 testimony you were showing us how your unit was laid out,  
12 remember, how the beds are laid out? And this came into  
13 evidence. Now you've got to bear with me for a second, I'm like  
14 very low tech.

15 And you remember this photograph, right?

16 A Yes.

17 Q And you were telling us about the phones in the back,  
18 remember that?

19 A Yes.

20 Q Now, there's something that was left out, because in the  
21 phones on your unit, and as I zoom into the back, there are two  
22 phones to the right and those phones are what are called  
23 hotlines. You can pick up one of those phones and you can  
24 directly contact the United States Attorney's Office, you know  
25 that?

Cross - "Maria" - Ricco

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1 MS. SHIHATA: Objection.

2 A No. Those phones are only for officers.

3 Q Okay, my question. Thank you.

4 A Are you talking about this phone here (indicating), then  
5 that's -- that's it.

6 Q Okay. Are you aware that you have the opportunity, if you  
7 want to, to speak to the U.S. Attorney's Office?

8 A No.

9 Q Okay. Now, also a person that you did not call about  
10 these problems you were having, you didn't call your lawyer  
11 Matt Kluger and ask him to come visit you, did you?

12 A No.

13 Q And you had a good relationship with him, didn't you?

14 A Yes, but, you know, as soon as you get sentenced your  
15 lawyer never ever comes back to visit you after that.

16 Q Well, that's not true. Didn't Matt Kluger come to visit  
17 you when you were in immigration?

18 A No.

19 Q Okay. Let's talk about good time. Yesterday in many  
20 questions you kept repeating to the jury that you didn't want  
21 to go to the SHU because you didn't want to lose your good time  
22 credit. You remember saying that?

23 A Yes.

24 Q You told us you didn't want any problems you wanted your  
25 good time, right? Right?

Cross - "Maria" - Ricco

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1 A Yes.

2 Q That you didn't want to serve more time, you just wanted  
3 to get out to get back to your family that was suffering,  
4 correct?

5 A Yes, I didn't want to cause my family anymore duress.

6 Q Okay. And that was your testimony, right?

7 A Yes.

8 Q Now, you told us that you consulted with Danilda about  
9 losing good time credit, right?

10 A What was that?

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Cross - "Maria" - Ricco

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1 Q You told us, told the jury that you consulted with Danilda  
2 about losing good time credit, she told you about a woman in  
3 Danbury, remember that testimony?

4 MS. SHIHATA: Objection. Misstates --

5 THE COURT: I'm sorry. Don't answer. I didn't -- do  
6 you have an objection?

7 MR. RICCO: I'll rephrase the question, your Honor.

8 MS. SHIHATA: Objection. It misstates the testimony.

9 THE COURT: He said he'd rephrase it.

10 MR. RICCO: I'll rephrase the question.

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Cross - "Maria" - Ricco

369

1 Q You spoke with an inmate about something that happened to  
2 a person in Danbury, right?

3 A Yes.

4 Q Now, let's be clear, you never was in Danbury, right?

5 A No, but she was in Danbury for ten years.

6 Q Who's she?

7 A Odie De La Cruz.

8 Q Okay.

9 A And the other person was Felicia. She was the one I was  
10 asking.

11 Q Okay. And so amongst your fellow detainees you often  
12 discussed what happened to other women who made complaints,  
13 right?

14 A No, no, no. Odie didn't know. I never told Odie that. I  
15 told her -- I asked her and she said, yes, there was somebody  
16 in Danbury who got more time.

17 Q So there were conversations about that, right?

18 A Yes, I went to her row one day and I talked to her about  
19 it. I asked her.

20 Q Now, I had asked you the question and you said that, you  
21 know, you were very concerned about getting back to your  
22 family, right? And you were concerned about keeping your good  
23 time credit, right?

24 A Of course, I didn't want to spend a single day more in  
25 there, and I was about to get out.

Cross - "Maria" - Ricco

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1 Q Do you remember when you were sentenced by Judge Swain  
2 you made the following statement M35, "Fear, I have to  
3 withstand many things and have to be extremely patient. And  
4 also I felt impotent because I promised myself I would not  
5 serve one more day than the time was given to me due to any  
6 event that might happen in jail or some person that would  
7 eliminate the good conduct. In other words, I shouldn't serve  
8 one more time because I'm able to have good conduct, because I  
9 could not bear it if my father and family had to suffer even  
10 one more day."

11 Do you recall making that statement in front of Judge  
12 Swain when you were being sentenced?

13 A Yes.

14 Q I want to ask you about -- are you familiar with the word  
15 jealousy?

16 A Yes.

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Cross - "Maria" - Ricco

371

1 Q So you told us -- you told the jury yesterday that Lt.  
2 Martinez was jealous when he asked you if you thought Officer  
3 Galicia was attractive.

4 MS. SHIHATA: Objection. Misstates the testimony.

5 MR. RICCO: I'll rephrase the question.

6 Q You remember you had a conversation with Lt. Martinez  
7 about Officer Galicia, right?

8 MS. SHIHATA: Same objection.

9 THE COURT: Then we have the transcripts. We have  
10 the transcript from yesterday.

11 MS. SHIHATA: There was no testimony about that  
12 yesterday.

13 MS. ARGENTIERI: Judge, our objection is there was  
14 testimony about that yesterday, so the question misstates the  
15 testimony.

16 MR. RICCO: I'll rephrase the question.

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Cross - "Maria" - Ricco

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1 Q Did you have a conversation with Lt. Martinez about a  
2 person named Officer Galicia?

3 A Yes.

4 Q He asked you, he asked you, not in another way, he asked  
5 you whether you thought Officer Galicia attractive?

6 A He asked me --

7 Q Uh-huh.

8 A -- which of the officers, you know, did I like. I said to  
9 him there is a guy Galicia. I don't know how it was all said,  
10 I said Dominican and then he said -- that's how the  
11 conversation went up. Yes. We did have that conversation,  
12 yes.

13 Q Okay.

14 A But I didn't say to him -- you're wrong about -- you're  
15 talking about jealousy and you're talking about Galicia?

16 Q I'm just asking questions.

17 A Yes, but you're confusing me.

18 Q I don't want to do that. Lt. Martinez's response was to  
19 tell you I don't want you to talk to him?

20 Is the question confusing? I could read -- ask it a  
21 different way.

22 A But you don't know when that conversation happened.

23 Q That's not my question. My question is: did Lt. Martinez  
24 say to you that he did not want you speaking to that officer?

25 A No.

Cross - "Maria" - Ricco

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1 Q Okay. Was there an occasion when you had a conversation  
2 with Lt. Martinez when he saw you talking to Officer Nunez?

3 A Yes.

4 Q He was jealous again, right?

5 A Why are you saying again? Galicia -- it was a  
6 conversation, we were just talking. He said which of the  
7 officers do you think are cute I said, oh, Galicia.

8 Q Okay. We got that.

9 A With the Nunez thing everything that had happened had  
10 already happened.

11 Q Did Lt. Martinez tell you he did not want you to talk to  
12 other COs, that's a yes or no?

13 A No. When he was -- when the Nunez thing happened what he  
14 was doing was kind of complaining to me, how come you're  
15 talking to Nunez in such a close way, friendly way.

16 Q Do you recall meeting with the agents and some prosecutors  
17 at a prior meeting and telling them that Lt. Martinez, 35-M4,  
18 page 13 second paragraph -- got it?

19 Do you recall meeting with the agent and the  
20 prosecutors and telling them that Martinez told you not to talk  
21 to the other COs? Did that ever happen?

22 A Martinez would say to me you be very careful. When I  
23 would walk through the door he would say you be very careful,  
24 you make sure you don't tell anybody, nobody of this. He  
25 didn't distinguish whether or not he meant officers or other

Cross - "Maria" - Ricco

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1 inmates. He didn't even want me to sit at that Hispanic  
2 person's desk. He said how come you're sitting there. That's  
3 what he would say to me.

4 Q Here's my question --

5 A What is it?

6 Q -- did you meet with the government agents and prosecutors  
7 on a prior occasion and say to them that Lt. Martinez told you  
8 not to speak to the COs period, yes or no?

9 A Yes. He would tell me not to tell them, not to talk to  
10 anyone, not to tell them.

11 Q No, that's not my question. In the context of Nunez and  
12 Galicia, did you meet with the prosecutors and the agents and  
13 with respect to the question of the guards, did you tell them  
14 that Martinez told you not to speak to them, yes or no?

15 A Yes.

16 THE INTERPRETER: Can the interpreter just clarify  
17 something from a previous answer from the witness? I was told  
18 not to sit at the Latino's table, not the Hispanic person's  
19 table or desk.

20 MR. RICCO: Okay.

21 Q Okay. Now, you have used the words -- the following words  
22 to describe Lt. Martinez that pig, right?

23 A Yes.

24 Q That little -- little bastard, right? Right?

25 A Yes.

Cross - "Maria" - Ricco

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1 Q Now, would you agree with me that you would not have any  
2 reason to be trying to find out whether or not that little  
3 bastard was married?

4 A I didn't care whether or not he was married. What I  
5 wanted him to hear was me saying his name, and that he was  
6 being described as he looked. That's what I wanted.

7 Q Would you agree with me that you would have no reason to  
8 be trying to find out whether that little bastard had pictures  
9 on his Facebook of other women?

10 A Yes.

11 Q Now, you had asked your friend, your female friend to  
12 check Lieutenant's Face -- Martinez's Facebook page and find  
13 out if he was married, correct?

14 A Yes. He would tell me that he wasn't, that he had  
15 divorced, gotten a divorce.

16 Q That's what I'm getting at. And you wanted to find out  
17 whether it was true, right?

18 A When he told me that he lived with his daughter and that  
19 he was divorced that was at the very beginning. You know, I'd  
20 be cleaning he'd be talking to me and I said, oh, yeah, really,  
21 why did you break up.

22 Q What --

23 A But by the point when I called Larihelys I said to her  
24 tell me, describe him to me, what does he look like.

25 Q And find out if he's married, right?

Cross - "Maria" - Ricco

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1 A I don't know if I said to her tell me if he's married. I  
2 know I asked her to describe all of the pictures he had up to  
3 me.

4 Q The pictures with the men or the pictures with the women?

5 A She described the pictures he had up of him and his  
6 coworkers, a photograph he had with a young girl, a small dog,  
7 a small tree. Photos of him with a woman, an older woman, a  
8 girl, I don't know. She just described a bunch of photos to  
9 me.

10 Q Would you agree with me that other than jealousy there  
11 would be no reason you would discussing other women on Lt.  
12 Martinez's Facebook?

13 A What was that?

14 Q I'll repeat the question. I'll rephrase the question.

15 Would you agree with me that other than jealousy  
16 there would be no reason for you to be discussing with your  
17 friend other women on the Facebook of the person who was called  
18 a little bastard?

19 A No. If I were jealous I wouldn't have told him, listen,  
20 go look for Sanchez, because Sanchez said she did want to be  
21 with him.

22 Q Now, you became aware that Lt. Martinez was involved in a  
23 relationship with a female corrections officer, didn't you?

24 A With a woman, a female?

25 Q Female correction officer.

Cross - "Maria" - Ricco

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1 A That -- if I found out?

2 Q Yes, did you become aware that Lt. Martinez was involved  
3 with a female correctional officer at the MDC?

4 A Me?

5 Q Yeah, you. Did you become aware?

6 A No.

7 Q Do you recall 3500-4, page 14 the second paragraph. Do  
8 you recall meeting -- you're sure about that? Are you sure  
9 that you never -- you never became aware?

10 A I don't know. I don't know. Keep -- continue with the  
11 questions.

12 Q Can I show you something that could help refresh your  
13 recollection?

14 A Uh-huh.

15 MS. SHIHATA: Objection. She didn't say she didn't  
16 recall.

17 MR. RICCO: She just said she'd like to have it.

18 MS. SHIHATA: She didn't. And she also has answered  
19 the question --

20 MR. RICCO: Can we have the interpreter give the  
21 answer that the witness gave, your Honor?

22 THE COURT: All right. You want me to have the ESR  
23 operator play it back?

24 ESR OPERATOR: I have to say the playback won't be  
25 very clear because there's lots of voices on top of each other

Cross - "Maria" - Ricco

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1 all together.

2 THE COURT: Okay.

3 Q Would you like to see something? Would you like to see  
4 something to refresh your recollection, yes or no?

5 A Show it to me.

6 Q Okay.

7 MR. RICCO: Your Honor, I approach with 35-M-4, page  
8 14.

9 MS. ARGENTIERI: Judge, can we approach, please?

10 THE COURT: Yes.

11 MR. RICCO: Hold it. I'm going to show it --

12 THE WITNESS: Judge, should I just hold this?

13 MR. RICCO: No, no.

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Sidebar

379

1 (Discussion held at sidebar.)

2 MS. ARGENTIERI: My objection is I don't think the  
3 paragraph indicate that this witness previously said that  
4 Martinez had sex with someone at the jail.

5 THE COURT: This one, that's the paragraph? What is  
6 this --

7 MR. RICCO: It's the correction officer. And they're  
8 bringing that person in to testify, your Honor.

9 MS. SHIHATA: We're not.

10 MS. ARGENTIERI: We're not bringing in --

11 MR. RICCO: Well, that's your -- you told me you  
12 were, so that's why I'm --

13 MS. ARGENTIERI: It's not the same officer, Tony.

14 MS. SHIHATA: This is not --

15 MR. RICCO: Well, then, fine, I'm doing it anyway.

16 MS. SHIHATA: You know -- Judge, our objection is  
17 that the --

18 THE COURT: Could I --

19 MS. SHIHATA: I'm sorry, Judge.

20 THE COURT: I don't take offense when I'm interrupted  
21 and interruptions at sidebars are quite common. People just --

22 MS. ARGENTIERI: They can't control themselves.

23 THE COURT: I don't find it -- I don't think that it  
24 reflects any disrespect.

25 MS. ARGENTIERI: Okay, good.



Sidebar

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1 THE COURT: And this is an interview with the other  
2 person?

3 MS. ARGENTIERI: This is an interview of Maria.

4 THE COURT: Uh-huh.

5 MS. ARGENTIERI: And Mr. Ricco is suggesting that --

6 MR. RICCO: I'm not suggesting.

7 MS. ARGENTIERI: -- that in this paragraph she  
8 previously said that she was aware Martinez was having sex with  
9 another CO. That's not what -- that's not what this paragraph  
10 says.

11 And in the reference to the unidentified female, who  
12 she describes as dark skinned and possibly wore a wig have  
13 nothing to do with, and does not describe the other witness  
14 that will be coming in. So I don't think that. I think her  
15 answer was no. And I don't think that this is an appropriate  
16 impeachment or refreshing her recollection.

17 MR. RICCO: Judge, I think it's very appropriate --

18 THE COURT: What was -- what specifically was your  
19 question?

20 MR. RICCO: The question gets down to why she would  
21 have these concerns about a person who has raped her and forced  
22 her in the jail. Why would she have concerns about --

23 THE COURT: This says "P".

24 MR. RICCO: Yes, that's her.

25 THE COURT: Oh, that's her. I'm sorry.

Sidebar

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1 MR. RICCO: Right. And she wanted to tell Martinez  
2 that people will figure out that Martinez was having sex with a  
3 correction officer.

4 MS. SHIHATA: No.

5 MS. ARGENTIERI: No, with "P." The substance of it  
6 is Maria wanted to tell Martinez the people at MDC will figure  
7 out he was having sex with Maria. This has nothing to do with  
8 him having sex with someone else.

9 MR. RICCO: Well, that's not what that says.

10 MS. SHIHATA: It is what it says. What he is saying  
11 he's not a fair inference from that.

12 MR. RICCO: It's not.

13 MS. SHIHATA: And it's not what she said.

14 MR. RICCO: Okay, well, if that's not a fair  
15 inference then I won't ask the question. I thought that that's  
16 said.

17 MS. ARGENTIERI: She answered the question, she said  
18 no.

19 MR. RICCO: No, no, come on stop it. Stop it.

20 THE COURT: Tell me again what your objection is.

21 MS. ARGENTIERI: He's asking if Maria had any  
22 knowledge about whether or not the defendant had sex with  
23 another CO at the jail she said no. He said are you sure, do  
24 you want to reconsider, she said no. Then he said do you  
25 recall meeting with agents on this day. This doesn't impeach

1 her as to that.

2 THE COURT: Well, this says, we're using her -- her  
3 name that we're using in court not what's on the document,  
4 Maria wanted to tell Martinez that people in the MCC  
5 will figure out that he was having sex with her. That doesn't  
6 come under the ambit of the question of her being Maria.

7 MR. RICCO: Judge, I didn't get there yet, because  
8 why, why would this witness -- why aren't you guys listening,  
9 I'm not a trickster, I'm just -- the questions, why would this  
10 witness have these thoughts for a person who she says is raping  
11 her. Judge, people hide rape.

12 THE COURT: So you're saying that Maria wanted to  
13 tell Martinez that people at the MCC figured out he was having  
14 sex with her, because it indicated she was concerned about him  
15 being caught; is that it?

16 MR. RICCO: That's it.

17 MS. ARGENTIERI: But the question he was asking was,  
18 were you aware of whether Martinez was having sex with another  
19 guard at the jail.

20 MR. RICCO: Yes.

21 MS. ARGENTIERI: That has nothing to do with this.

22 MR. RICCO: It does have -- wait a second.

23 MS. ARGENTIERI: If you read the whole paragraph it  
24 says, Maria had only had seen -- unidentified female one.  
25 Unidentified female looked at her strange as if she were aware

Sidebar

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1 that Martinez and Maria have had sex. Maria wanted to tell  
2 Martinez that people at MDC would figure out Martinez was  
3 having sex with Maria. None of this has to do with sex  
4 Martinez was having it with someone else.

5 MR. RICCO: Judge, I can --

6 MS. SHIHATA: She has no knowledge of that. And he  
7 was trying to refresh her recollection or impeach her about  
8 that statement. And it's just -- I don't see the basis for it.

9 MR. RICCO: Judge --

10 THE COURT: Is there some way you could -- that would  
11 describe --

12 MR. RICCO: I can ask --

13 THE COURT: -- rephrase the question so that we --

14 MR. RICCO: -- Judge.

15 THE COURT: It's just -- I understand the --

16 MR. RICCO: She needs to --

17 THE COURT: -- I understand the --

18 MR. RICCO: She needs to listen.

19 THE COURT: I'm sorry, now I'm the one who's doing  
20 the interrupting.

21 MR. RICCO: Sorry, Judge.

22 THE COURT: It's okay.

23 MR. RICCO: I'm good.

24 THE COURT: No, no, I was interrupting.

25 MR. RICCO: I can rephrase the question.

Sidebar

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1 THE COURT: That Maria wanted to tell Martinez that  
2 people at the MCC will figure out that he was having sex with  
3 her. I can understand the relevance of that, because why was  
4 she worried about it.

5 MS. ARGENTIERI: That's fine, but that wasn't the  
6 question, Judge.

7 MR. RICCO: Excuse me, Judge, we're getting to the  
8 question. They cut me off. I can rephrase the question.

9 THE COURT: So we don't have to come running back  
10 here, you're going to rephrase the question.

11 MR. RICCO: I'll rephrase it, Judge. I'll put it  
12 some way such that they're happy about it.

13 THE COURT: Okay.

14 MR. RICCO: Okay. Well, Judge, you know we can't,  
15 like cross is not the sinister, in the sense that there's  
16 questions that --

17 THE COURT: I don't think cross is sinister. It's  
18 guaranteed by the constitution.

19 MS. ARGENTIERI: Agreed.

20 MS. SHIHATA: Judge, could we just have this portion  
21 of the transcript sealed, because we used the real name of  
22 the --

23 THE COURT: We'll just --

24 THE CLERK: Judge, I've already told the court  
25 reporter to use the initial "P" and not use her name.

Sidebar

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1 MS. ARGENTIERI: That was my fault. I'm sorry, I read  
2 it out loud.

3 MS. SHIHATA: That was my fault, too.

4 MR. RICCO: That was outrageous.

5 THE CLERK: Her name will not be in the transcript.

6 THE COURT: I will grant you all amnesty.

7 MS. ARGENTIERI: Okay, thank you.

8 (Discussion concludes at sidebar)

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Cross - "Maria" - Ricco

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1 MR. RICCO: Okay, thank you, Judge.

2 CROSS-EXAMINATION (Continued)

3 "Maria"

4 BY MR. RICCO:

5 Q Do you recall meeting with the agents and the prosecutors  
6 and talking to them about a female CO who looked at you kind of  
7 funny one day?

8 A Yes.

9 Q And did you also tell them that you wanted to tell  
10 Martinez --

11 MR. RICCO: Well, withdrawn.

12 Q You felt that that look, that funny look, was that the  
13 person who looked at you was aware that you were having sex  
14 with Martinez.

15 A Yes, I remember that conversation. Yeah, because I told  
16 him that woman looked at me in a way -- yeah.

17 Q That she knows, right?

18 A Yes.

19 Q And did you tell the agents and the prosecutors that you  
20 wanted to tell Martinez that people at the MDC will figure out  
21 that he was having sex with you.

22 A Yes, and I didn't want that.

23 Q Do you remember yesterday, and if I am wrong correct me,  
24 you told the jury that Lt. Martinez had an angry conversation  
25 with you after that phone call and that he called you stupid,

Cross - "Maria" - Ricco

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1 and he asked you why did you make that call. Do you remember  
2 that testimony?

3 THE COURT: Which call, so that --

4 MR. RICCO: I'm sorry, your Honor.

5 THE COURT: -- so that my recollection is refreshed,  
6 which particular --

7 MR. RICCO: Yes, the call to Ms. Vargas.

8 A Yes.

9 Q And in response to the question that the prosecutor asked  
10 you, you said that your response to him was that you were  
11 tired. Do you remember saying that?

12 A Yes, because he kept asking me why did you do that, and he  
13 pounded the table and he said why did you do that, stupid. And  
14 I said well what? And he said well, you know what you did.

15 And I knew what he was talking about and so I answered  
16 because I'm tired, Martinez.

17 Q Okay.

18 A I'm tired.

19 Q All right. And the prosecutor asked you a follow-up  
20 question. She said when you said tired, what did you mean?

21 And you said I was tired of him doing what he was doing to me  
22 every time. Do you remember that testimony from yesterday?

23 A Yes.

24 Q Now do you remember meeting with the prosecutors and the  
25 agents, 3500-M-4, Bates stamp page 15. Do you remember that



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1 when you were discussing the call, you said to the agents, when  
2 Martinez was asking the questions, you did not let me call my  
3 mom and she was sick and I'm tired of the way you are treating  
4 me. Did you make that statement to the agents in a meeting and  
5 the prosecutors, yes or no?

6 A But that lawyer is mixing one thing up with the other.  
7 The only thing that I asked him was to let me call my mother  
8 when my mother was sick. What does that have to do -- what  
9 does that have to do with when he went to the unit?

10 Q My question is simply yes or no. Did you tell the agents  
11 and the prosecutors in response to the question about his anger  
12 and the phone call, "That you did not let me call my mom when  
13 she was sick and I'm tired of the way you're treating me." Did  
14 you make that statement, yes or no?

15 A Yes.

16 Q I'm going to ask you about the jail environment, where you  
17 lived in the jail. Is it true that the inmates are aware of  
18 where the cameras are located?

19 A Yes, because they can be seen.

20 Q And is it true that the inmates have discussions amongst  
21 themselves about those areas of the jail where there are  
22 cameras and those areas of the jail where there are not  
23 cameras?

24 A Yes.

25 Q Now after time you say you was first penetrated by Lt.

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1 Martinez, you had a discussion in the bathroom stall with a  
2 young lady, right? What was her name again?

3 A Kiara Maldonado.

4 Q And is she the one that you told to get out of the stall  
5 because he could see us on the camera?

6 A Yes, because there was a camera right in front of the  
7 bathrooms that filmed or that showed the bathrooms. Even  
8 though it was at some distance, you could see -- if you zoomed  
9 the camera like had to do it close-up, it could be seen that I  
10 was speaking with her.

11 Q Okay. And you did not want to be observed on camera in a  
12 bathroom stall talking to the woman, isn't that correct?

13 A No. Because from the time that I arrived I had been  
14 talking to her.

15 Q Okay.

16 MR. RICCO: Judge, I m going to move on.

17 Q Are you aware that guards give personal information about  
18 themselves to inmates?

19 A What?

20 Q Are you aware from your time at MDC that the guards give  
21 to the inmates personal information about themselves?

22 A Do you mean that the officers give information to the  
23 prisoners?

24 Q Yes.

25 A Yes, some of them, yeah.

Cross - "Maria" - Ricco

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1 Q Okay.

2 A Some don't.

3 Q A lot don't, right?

4 A No.

5 Q Some bring gifts.

6 MS. SHIHATA: Objection.

7 A Well, they never gave me one.

8 THE COURT: What's the objection?

9 MS. SHIHATA: Relevance.

10 THE COURT: I'll allow it.

11 Q But I thought you told us he brought you the pill.

12 MS. SHIHATA: Objection to the characterization of  
13 that as a gift, your Honor?

14 A No.

15 THE COURT: Well, she's answered it no.

16 Q Would you agree with me that it's very difficult to keep  
17 secrets in a jail environment?

18 A No, wait a second. A minute ago when you said gift, I  
19 don't know if you were referring to the pill.

20 Q Well, I think that you told us --

21 A Because that was not a gift.

22 Q I think that you told us -- told the jury when he gave you  
23 the pill, you said thank you. Was that your testimony?

24 A Yes, but that's not a gift. A gift is a pair of tennis  
25 shoes. A gift is a blouse, cologne, like something that you

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1 bathe with.

2 Q Your testimony was that Lt. Martinez gave you the pill,  
3 you said thank you. Did you testify to that in this courtroom?

4 A Yes, and that's true. I said thank you.

5 Q Okay. You also said to us that you thought it was unusual  
6 that you were referred to by your first name by Lt. Martinez.

7 A Yes, he always referred to me by my first name. In fact,  
8 one day he brought it up to me because I hadn't even realized  
9 it, that he was referring to me that way.

10 Q Okay. The C.O.s and the inmates use slang words when  
11 speaking to each other to describe each other, don't they?

12 A What is slang?

13 Q How about "Little Rooster," have you ever heard that term?

14 A Little Rooster? Well, wait, that's in English.

15 Q Yeah.

16 A Well, can you give that to me in Spanish?

17 Q That's what the interpreter is doing.

18 THE INTERPRETER: By the interpreter, if it's a name,  
19 then it's the same in English as it is in Spanish.

20 MR. RICCO: Okay. So can you explain that to the  
21 witness please?

22 (Interpreter complies)

23 Q Do you know if there is a C.O. who is known as Little  
24 Rooster?

25 A Yes.

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1 Q Okay. How about -- I'll leave that one. I'm going to ask  
2 you a couple of questions about Nol Lopez. How long have you  
3 know him?

4 A I don't even know. He's from where I am from.

5 Q This is 2018. Have you known him since maybe 2006, 2005?  
6 Do you know?

7 A I don't know, he always lived here. He would come down to  
8 where I was living outside of the city. I was a little girl at  
9 the time. He would come down on his vacation.

10 Q But you were not a little girl when he came to visit you  
11 in jail; right?

12 A No.

13 Q And, Noel, you never shared with Noel Lopez anything about  
14 your involvement in drugs; isn't that correct?

15 A No.

16 Q You didn't tell him that you were indebted \$300,000 to a  
17 person?

18 A Would I have gone into details about my personal life? Do  
19 you think?

20 Q Does that mean no? You didn't tell him about the  
21 \$300,000?

22 A No, I don't like to talk about my business.

23 Q Okay. We'll come to that.

24 When he visited you in the jail, you asked him to give you  
25 \$8000 to take care of some of your business; didn't you?

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1 A \$8,000?

2 Q That's my question. Did you, yes or no?

3 A You're crazy. No, no.

4 Q So your answer's "no, I'm crazy." Is that your answer?

5 A No.

6 THE COURT: Well, the answer is, is your answer yes?

7 A No, I didn't ask Noel to give me \$8,000.

8 Q And you didn't ask Noel to get together with family and  
9 friends to raise \$8,000; never happened, did it?

10 A That's different.

11 Q What's different?

12 A I told him that when I got to immigration I want to get a  
13 lawyer and wanted to get together, I don't know, \$5,000, \$8,000  
14 bucks. That's how much a lawyer costs. You know, it wasn't,  
15 "I want you to lend me \$8,000 bucks," you know, he could put up  
16 \$1,000 bucks, Ramon (ph), he could get it together from people.

17 Q Okay. So we went from no, you're crazy to --

18 A No.

19 Q I'll rephrase the question. You did ask him for money  
20 related to your business. Business of getting a lawyer; right?

21 A As I understood your question, "did you ask Noel for  
22 \$8,000?" And I said, "no."

23 Q Okay.

24 A I did want to get money together to pay for a lawyer.

25 Q Okay. Did you get the money?

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1 A No.

2 Q When he came to the jail, you intentionally kissed him on  
3 the mouth; correct?

4 A Yes, because I asked him to do that over the phone. He  
5 knew that too.

6 Q Okay. And -- now, you didn't do that so that Lt. Martinez  
7 could be jealous, did you?

8 A I did it so he would see that I at least had somebody  
9 here.

10 Q And I think what you told the jury was so that he would  
11 stop forcing and threatening you to have sex; right?

12 A Yes.

13 Q Okay. Now, Ms. Vasquez and Noel Lopez are Facebook  
14 friends; aren't they?

15 MS. SHIHATA: Oh, Oh, I think you meant, Vargas.

16 Q Vargas, I did, thank you. Are Facebook friends; right?

17 THE INTERPRETER: Could the interpreter have the  
18 question?

19 MR. RICCO: Yes.

20 Q Ms. Vargas and Noel Lopez are Facebook friends; correct?

21 A I don't have Facebook I don't use Facebook. I had  
22 Facebook before my arrest and then I never, ever went on it  
23 again after that. So no, I guess I'm not a friend of Larihelys  
24 Vargas, because she deleted me. I think she deleted me.

25 Q That's now, I'm talking about when you went to jail?

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1 A Yes.

2 Q Okay. Now, you told us that you had her make the call and  
3 get Facebook contact with Lt. Martinez; right?

4 A Yes.

5 Q You didn't ask the man, Noel Lopez, to do it; did you?

6 A I didn't really talk so much to Noel Lopez like that.

7 Q Like what?

8 A He was my friend.

9 Q So the answer's no, you didn't ask him to do it; right?

10 A No.

11 Q Isn't the real reason why you asked a woman to do it is  
12 because you believe that the person that you described as the  
13 "little bastard" would give information to the woman?

14 A To what woman?

15 Q Ms. Vasquez --

16 MS. SHIHATA: Vargas.

17 MR. RICCO: Vargas, sorry.

18 A Wait, what?

19 Q I'll ask the question again. Isn't the real reason why  
20 you asked Ms. Vargas to do it is because you believe as a  
21 woman, she would have been able to get more information from  
22 the person that you described as the "little bastard." Isn't  
23 that why you picked the woman, Ms. Vasquez -- Vargas?

24 THE INTERPRETER: Counselor, the interpreter just  
25 needs the tag at the end, your voice dropped.



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1 Q I'll ask it again. Sorry, Judge. Isn't it true, that the  
2 reason why you asked your female friend to do it, that is  
3 contact Lt. Martinez, is because you believed, that she, as a  
4 woman, would get more information out of him; isn't that  
5 correct?

6 A If that has been the case, I would have asked Noel, he's  
7 much better at computer stuff.

8 Q But you didn't ask him and he's better at computer stuff.  
9 You didn't ask him; right?

10 A No.

11 Q Now, I want to ask you some questions about immigration  
12 and then I'm through. For the first time, you reported the  
13 stories of force and threats after you were into immigration  
14 custody. Isn't that correct?

15 A Don't say until I got there because I didn't talk about it  
16 when I first got there. I had been there for almost a year  
17 when these people came to talk to me. And it wasn't until two  
18 months later, after I checked into it carefully that I told  
19 them.

20 Q Right. You wanted to check things out.

21 A Yes, because I didn't want to go back. I would say, Nani,  
22 they're coming for me, I'm going go back there. I'm going to  
23 go for more.

24 Q And you discussed this with your fellow detainees at  
25 immigration; right?

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1 A Nani was there. Melva was maybe there three weeks after I  
2 got there.

3 Q Is that yes, you discussed it with a fellow detainee at  
4 immigrations, yes or no?

5 A Yes.

6 Q And this was one of the same people that you were together  
7 with at the MDC; correct?

8 A Yes.

9 Q Now, when you got to immigration, you got a new lawyer;  
10 right?

11 A Yes.

12 Q Who met with you and you decided to file a petition for  
13 asylum so that you could stay in the country; correct?

14 A Yes.

15 Q And you filed under an exception that allows victims of  
16 human trafficking who face danger upon deportation to remain  
17 here in the United States; correct?

18 A I told my lawyer what happened, she understood the  
19 applications and what had to go in that.

20 Q And in support of that application, you signed a sworn  
21 statement under perjury; right?

22 A Yes.

23 Q And that meant that, if you made statements that were  
24 false in connection with that petition, you could be prosecuted  
25 and sent to jail for perjury; right?

1 A Yes.

2 Q The person who also had to sign it and verify the  
3 information was the lawyer.

4 A Yes.

5 Q Did the lawyer meet with anybody in your family other than  
6 you?

7 A Yes.

8 Q Who?

9 A One of my aunts, I think she got the papers, I don't know  
10 if she met Ramon.

11 Q That's not my question. My question is, that the lawyer,  
12 who signed the petition, did they discuss the contents of the  
13 petition with anybody in your family other than you?

14 A Yes.

15 Q So other people in your family spoke to the lawyer about  
16 Deyberto.

17 A No. I said time and time again to her, over and over be  
18 very careful if -- if -- be careful and not talk to them about  
19 him. I didn't want -- I don't think anybody gave her  
20 information about that person Deyberto.

21 Q Okay. So the information in your petition, about your  
22 drug dealing, your interactions with Deyberto, the debt and the  
23 trips, all came from you.

24 A They sent for all of the papers concerning that man. The  
25 sent for them from my country. What he had committed. That's

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1 what they did.

2 Q That wasn't my question. My question was, did anybody in  
3 your family discuss with the lawyer, the allegations in this  
4 petition about your relationship with Deyberto?

5 MS. SHIHATA: Objection. Asked and answered.

6 MR. RICCO: Was not answered.

7 THE COURT: She'll answer it again. She didn't.

8 MS. SHIHATA: As well as if it's -- an also attorney  
9 client privilege if it's per knowledge of whether attorney did.  
10 So that's a separate objection, your Honor.

11 THE COURT: Can you repeat the question.

12 Q This petition is signed by both you and your lawyer;  
13 right?

14 A Yes.

15 Q And you both allege in your signatures, that the  
16 statements made in support of this application are true?

17 A Yes.

18 Q And I'm asking you to your knowledge, did the lawyer  
19 discuss the allegations in this petition --

20 MS. SHIHATA: Objection.

21 -- with anyone in your family other than you?

22 MS. SHIHATA: Same objection, Judge.

23 THE COURT: Overruled.

24 A Yes. My lawyer was talking to my sister but my sister  
25 only -- my family really doesn't know what had -- what

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1 happened. My family -- I don't want, you know -- I would tell  
2 her what -- my sister had been burned, my mother had been  
3 burned, everybody had gotten burned. I didn't want -- Deyi  
4 told me that -- I didn't tell them that Deyi was the guy who  
5 sent people to do that, how? My family got burned because of  
6 me.

7 Q Did your lawyer discuss, with anybody in your family, your  
8 \$300,000 drug debt?

9 A No, I don't think so, I don't know.

10 Q Did your lawyer discuss with anyone in your family the  
11 number of trips that you took in drug dealing?

12 A If the lawyer spoke to my family?

13 Q If you don't understand the question, I'll re -- I'll  
14 re-ask the question.

15 A Okay. Repeat the question.

16 Q To your knowledge, did your lawyer discuss with someone in  
17 your family other than you, the number of drug trips that you  
18 took when working with Deyberto?

19 A I don't know. I don't know, I was in jail. I don't know  
20 who she spoke to. I know she spoke to my sister and took her  
21 papers to the office.

22 Q Did you ever discuss with your sister the number of drug  
23 trips you took?

24 A No.

25 Q Your sister wrote a letter to Judge Swain; isn't that

1 correct?

2 A Yes. She knows -- she knows that I was involved in drugs  
3 but she doesn't know how many times.

4 Q She said that she wasn't even aware that you were involved  
5 in drugs. That you were a nice person. Did you see the  
6 letter?

7 A No. No, that letter was taken to the lawyer and the  
8 lawyer took it to the Judge.

9 Q You didn't discuss with your sister the number of drug  
10 trips that you took, now did you?

11 A That I didn't talk to my sister?

12 Q That's not the question. You know what the question is.

13 MS. ARGENTIERI: Judge, the witness -- objection,  
14 asked and answered. The witness has answered this question at  
15 least twice.

16 THE COURT: Well, answer it again.

17 Q The Judge says, "answer the question."

18 A Tell me the question again.

19 Q I'll tell -- I'll ask you again. You did not discuss with  
20 your sister the number of drug trips that you took when you  
21 were working with Deyberto; did you?

22 A I don't remember well. It's like -- they knew that I was  
23 incarcerated because of drugs, but they didn't even know what  
24 jail I was in. If it was federal, if it was state, they're in  
25 Santo Domingo.

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1 Q Look, I didn't ask you if you were in jail in Santo  
2 Domingo; correct? Correct?

3 A Yes.

4 Q I did ask you whether you were in jail here in the United  
5 States; correct?

6 A All right. The truth is, I -- to tell you the truth, I  
7 don't remember. I don't know if I talked to her about that.

8 Q Okay. So you might have told her bout the drug trips that  
9 you took with Deyberto? But your not sure.

10 A I didn't hear the end of the question, I'm sorry.

11 Q But you're not sure.

12 A Every time that my family had to move, I just reached out  
13 to them and I told them, "listen, you need to move." I didn't  
14 give them a lot of explanations.

15 Q So that means no, you didn't tell them? Right?

16 A I didn't tell them everything but they knew. Every time  
17 that guy -- every time Deyi sent somebody over there, they  
18 knew. They knew that I had to pay a debt. They knew that I  
19 was here involved so they don't know if it was four times or  
20 five times that I went to pick up drugs.

21 Q Because you never told them that, that's the question.  
22 It's not complicated.

23 A I don't know.

24 Q Okay. Now the statement that you made in support of your  
25 application, where you identified Deyberto Torres, as you

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1 former partner, and as a person who forced you through threats  
2 and caused you to get into the drug business against your will,  
3 that was inconsistent with the story that you told to Judge  
4 Swain in federal court, isn't it?

5 A But I didn't mention Torres. Because I didn't mention the  
6 name Torres Because the prosecutor wouldn't let me. He asked  
7 me "why did you make that trip, why did you pick up drugs."  
8 And I said because my brother was on the phone and said that  
9 the people had already left and so I left. And he kept asking,  
10 "why did you go, why did you go?" It's because, and I said, I  
11 told the truth, I said it was because I had seen the black SUV.

12 Q Let's pay very close attention to the question and try to  
13 answer the question if you can. And let's leave the name  
14 "Torres" out. The statement that you made in support of your  
15 asylum application, where you claim that your former partner  
16 forced you through threats and caused you to get into the drug  
17 business against your will, that was inconsistent with the  
18 story that you told Judge Swain; isn't that correct?

19 A Yes.

20 Q And the statement that you made in support of your asylum  
21 application, that you entered the United States and remained  
22 present in the United States, on account of being forced and  
23 threatened to engage in the drug business, was inconsistent  
24 with the statements that you made before Judge Swain, isn't  
25 that right?



Cross - "Maria" - Ricco

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1 A I'm not -- I'm not understanding.

2 Q The interpreter isn't?

3 A No, the interpreter says that the witness says she's not  
4 understanding.

5 Q I'll rephrase the question. Have you ever read your  
6 asylum application?

7 A Yes, when I was in immigration I read it.

8 Q Do you have any like, present recollection of the things  
9 that was said in that application?

10 A I -- I -- I told -- I said what happened and the lawyer  
11 wrote it down and she filled out the application.

12 Q And you read the application before you signed it; right?

13 A Well, yes, I -- I was supposed to read it, it was -- you  
14 don't have to read about it when something happens to you.

15 Q Well, you have to read about this statement, because it  
16 says, "that all of the information is true and accurate" and  
17 you say that under penalty of perjury. Do you know that?

18 A Yes.

19 Q And do you know your application says that each and every  
20 question in this form, as well as my answers to each question  
21 has been read to me in Spanish as well as my answers to the  
22 questions with the interpreter.

23 A Yes.

24 Q Your statement, where you said "that you remained in the  
25 United States on account of drug dealing" was inconsistent with

Cross - "Maria" - Ricco

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1 the statements that you made in court before Judge Swain; isn't  
2 that correct?

3 A That's why when I was in Patricia's court, I said yes, I  
4 lied, I did not want to bring my family in danger. I was not  
5 going to mention that name here so that he'd be able to find  
6 out that I was talking about him, no. But immigration, I don't  
7 know. But immigration -- in immigration I was told that it was  
8 confidential that that person's name could not --

9 Q But we're not talking about the person's name. We're also  
10 talking about what you did. Did you stay in the United States  
11 for the purposes of conducting drug transactions; yes or no?

12 A If I stayed in the United States?

13 Q Yes, that you remained in the United States on account of  
14 drug trafficking?

15 A I'm sorry, Counselor, could you repeat the question. Just  
16 the end.

17 Q That you are present in the United States on the account  
18 of drug trafficking. Did you say that?

19 A I came here to marry my boyfriend.

20 MR. RICCO: Your Honor, I move to introduce this  
21 statement as a prior inconsistent statement.

22 MS. SHIHATA: It's -- could we have a sidebar?

23 THE COURT: Ladies and gentlemen, this would be a  
24 good time to take a short break.

25 THE CLERK: All rise.

Cross - "Maria" - Ricco

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1 (Jury exits courtroom.)

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Sidebar

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1 (Discussion held at sidebar.)

2 MS. SHIHATA: Can we approach, your Honor?

3 THE COURT: Of course.

4 MS. ARGENTIERI: Do you want to take a break and then  
5 we can do it when we come back?

6 THE COURT: Yes.

7 MS. ARGENTIERI: Okay. Okay. You're in charge.

8 THE CLERK: Judge, the interpreter needs to put  
9 something on the record. Counsel? Counsel? The interpreter  
10 needs to put something on the record. In front of the  
11 microphone.

12 THE INTERPRETER: Your Honor, when I was at the  
13 stand, I believe Mr. Ricco used the word -- he said "Ecuador"  
14 and I didn't hear it. My colleague thought she heard it so if  
15 Mr. Ricco did say "Ecuador" in one of his questions, it was  
16 uninterpreted because I didn't hear it.

17 MR. RICCO: I did.

18 MS. SHIHATA: I didn't hear that either.

19 MS. ARGENTIERI: I didn't hear the word Ecuador  
20 but --

21 THE COURT: Does anybody want me to do anything?

22 MS. ARGENTIERI: No.

23 MR. RICCO: No.

24 MS. SHIHATA: No, your Honor.

25 Recess from 12:09 p.m., until 12:19 p.m.)

Sidebar

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1 (Discussion held at sidebar.)

2 THE COURT: Okay. Do you want to come up?

3 MS. ARGENTIERI: Yes, Judge. You'll let us know.

4 THE COURT: Could we go off the record for one  
5 second?

6 (Off the record.)

7 MS. ARGENTIERI: So the objection was to the  
8 question, really the statement moving in the witness'  
9 immigration paperwork. The question previously posed to the  
10 witness was, are you -- did you remain or are you present --  
11 did you represent that you were present in the United States as  
12 a result of drug trafficking? She said no.

13 And then Mr. Ricco went to move in 3500-M-11 which is  
14 for asylum paperwork and he has explained to us that he is  
15 referring to the question that says -- it's a part that you  
16 have to fill out on the form that says, "I am physically  
17 present in the United States," I am just going to say etc.,  
18 etc., "on account of trafficking."

19 That refers to human trafficking which is the nature  
20 of the application. I don't know that that will be -- so it  
21 refers to human trafficking and it's a legal term that has been  
22 defined through immigration case law that to be honest with  
23 you, I am no expert in. But I think it would be very  
24 misleading to allow Mr. Ricco to impeach this witness by  
25 introducing this document because it's not inconsistent with

1 what she said and it doesn't impeach her at all.

2 MR. RICCO: Judge, I know a little bit about these  
3 documents. I will say this. Also on page 48, there's a  
4 statement and it says, "Ms. "P" was in the United States on  
5 account of trafficking. She's currently" -- blah, blah, blah,  
6 "although she's left several times after the trafficking  
7 situation began, the trafficker continued to exercise hold over  
8 her."

9 Judge, this is an application for asylum under human  
10 trafficking exception that includes drug trafficking. My  
11 point, Judge, is I -- the witness has said she's not -- she's  
12 here because --

13 THE COURT: Not here because of what?

14 MR. RICCO: Because of drug trafficking. She says  
15 she is here -- she came here because she wanted to marry her  
16 husband. Now we're back to the story she told in front of  
17 Judge Swain. But that is not what is in this application.  
18 There's not one word of that in this application, not one  
19 single word of it. This is a heavy application that lays out  
20 that the -- that Maria was a person who was forced into  
21 involuntary servitude and peonage with threats of fraud, death  
22 and physical harm.

23 And that she relented and came into the country for  
24 the purposes of drug dealing. Although she left, she came back  
25 on account o drug dealing.

1           It's misleading for the witness to say well, no, I  
2 came here because I wanted to marry my husband. The question  
3 is what's the statement that was made in supports of the  
4 application? If she denies it, then it's an inconsistent  
5 statement. If she wants to say -- you know, if she wants to  
6 avoid the question and talk about what she wants to talk about,  
7 that's fine but at some point, the witness has to answer the  
8 question that's before her and this application is filled with  
9 allegations of being forced, of being threatened, of suffering  
10 emotional harm as a result of it, and she's denying it.

11           MS. ARGENTIERI: Judge, I don't think that that's an  
12 accurate of statement of what's been happening here. Mr. Ricco  
13 should be free and the Court should allow him to ask about  
14 things in this document that are different than things the  
15 witness has testified to but it is just a misrepresentation to  
16 say that this form is referring to anything other than human  
17 trafficking. He asked her, are you physically present here as  
18 a result of drug trafficking, she said no. That's accurate and  
19 it's consistent with this document which refers to human  
20 trafficking. All of the --

21           THE COURT: I'm sorry. I'm getting confused. I  
22 thought he said human trafficking or somebody said that human  
23 trafficking includes drug dealing.

24           MR. RICCO: It does, your Honor.

25           MS. ARGENTIERI: He said human trafficking -- I'm

1 sorry. Mr. Ricco said that human trafficking includes drug  
2 trafficking. All I am pointing out, Judge, is that the  
3 trafficking on the form that he said he wanted to introduce to  
4 impeach her references trafficking. It means human  
5 trafficking.

6 And the witness is not here and it was not her  
7 testimony that she came here as a result of drug trafficking.  
8 The drug trafficking that she testified about happened after  
9 she came to the United States and she's been very clear about  
10 that. And it's also consistent with her affidavit.

11 I don't think he has established a basis upon which  
12 to impeach her with this document. He went to admit it into  
13 evidence as a prior sworn statement that was inconsistent. It  
14 is not inconsistent with her testimony.

15 MR. RICCO: Well, Judge, it inconsistent with her  
16 testimony because each time a question is asked of her about  
17 one of the allegations that is here, she goes off onto a  
18 tangent about what she wants to speak to -- speak about.

19 This is a serious application, that's a sworn  
20 application and it has very similar type of allegations of  
21 threat, force --

22 THE COURT: No, I thought her point was that she  
23 didn't engage in drug trafficking until after she got here.  
24 That that was not the reason she came here. And that the  
25 question seems to me, as to you she came here.



1 MR. RICCO: This application, this exception is  
2 available to people who either entered or remained in the  
3 country as a result of drug trafficking where they're forced --  
4 like forced labor.

5 THE COURT: Right.

6 MR. RICCO: And that's what this has been shoe-horned  
7 under. I can ask her -- Judge, I can ask her each one of the  
8 questions and I'll take the answers for what they are. I have  
9 no interest in this document other than to question her about  
10 the information that's in it, as it relates to her ability to  
11 talk about events and relate events pertaining to her own  
12 conduct and her conduct changes from immigration application,  
13 court, post-arrest, safety valve, it changes. And so I'm  
14 impeaching her on it.

15 I have no real issue on whether or not that portion  
16 of her statement comes in -- the statement itself comes in.  
17 It's a sworn statement. It will come in for the truth. And  
18 there's nothing about this application that prejudices the  
19 government one way or another, since they're saying this is  
20 what she said. And it's a sworn statement. So where's the  
21 prejudice?

22 MS. ARGENTIERI: That's not the -- that's just not  
23 the standard for impeaching a witness with a prior sworn  
24 statement.

25 MR. RICCO: I didn't say it was the standard for

1 impeaching.

2 MS. ARGENTIERI: And we have met --

3 MR. RICCO: I thought I complied with the standard.  
4 I confronted her with the question. She denied it. So I moved  
5 to put the statement in.

6 MS. ARGENTIERI: And I think our --

7 MR. RICCO: That's the standard for impeachment.

8 THE COURT: Well, are we just talking about  
9 definitions of the -- the legal definition of the term  
10 trafficking?

11 MS. ARGENTIERI: It is, yeah.

12 THE COURT: Hmm?

13 MS. ARGENTIERI: It is a legal definition, Judge,  
14 you're right.

15 THE COURT: No, is that the dispute?

16 MR. RICCO: No.

17 THE COURT: Over --

18 MS. ARGENTIERI: I think --

19 THE COURT: Your objection is that there's a -- that  
20 the word trafficking has a legal definition.

21 MS. ARGENTIERI: Yes. He specifically asked her  
22 about -- Mr. Ricco specifically questioned her about drug  
23 trafficking and my understanding is the definition of  
24 trafficking in this document is not drug trafficking and I  
25 don't think that there's a -- there's not an inconsistent

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1 statement upon which there's a basis to impeach this witness  
2 yet. And so --

3 THE COURT: I don't understand. You said the  
4 statement in that document is not about drug trafficking?

5 MS. ARGENTIERI: It's about -- it's a legal  
6 definition and my understanding is, and I am not an immigration  
7 lawyer, that it is human trafficking and the definition has  
8 evolved over time. If we want, I think I could get -- we could  
9 try to find an immigration lawyer here but I think it's much  
10 more --

11 THE COURT: We don't need an immigration lawyer.  
12 It's right in the statute. The statute defines the term. It's  
13 in 8 USC. I mean district judges don't deal with immigration.

14 MR. RICCO: 22, it's 22 USC 7102, your Honor.

15 THE COURT: 22?

16 MR. RICCO: 7102 9(b).

17 THE COURT: I thought immigration and naturalization  
18 offenses were in an earlier volume of the U.S. Code.

19 MR. RICCO: I am just reading from the application.

20 THE COURT: Oh.

21 MR. RICCO: See, and also, your Honor, what's  
22 interesting is the government in their direct says well, you  
23 owned up to the statements that you made in the district court  
24 in this document. There's one line in here that says I -- my  
25 statements that I gave in the district court were different.

1 They can point to one line. That's it.

2 MS. ARGENTIERI: Judge, there was a whole proceeding  
3 underlying the immigration. We're not litigating the  
4 immigration proceeding.

5 MR. RICCO: We're not --

6 MS. ARGENTIERI: We're immigrating (sic) her  
7 statements. And, Judge, on the first -- I'm sorry, I just  
8 would like to get this out but on the first page of this  
9 document that is the application it says, that Maria is a  
10 victim of severe human trafficking. The TVPA defines severe  
11 human trafficking as recruitment, harboring, transportation,  
12 provision or obtaining of a person for labor or services through  
13 the use of force, fraud, or coercion for the purpose of  
14 subjection to servitude, peonage, debt bondage or slavery.

15 That is the -- when they answered that question  
16 about trafficking, they were talking about human trafficking.  
17 So whether -- it's very clear from the document itself and I  
18 understand Mr. Ricco would like to move this document into  
19 evidence but there has to be a basis for it. She is not --

20 MR. RICCO: Judge?

21 MS. ARGENTIERI: He has not impeached her -- I'm  
22 sorry -- he has not impeached her yet as to a specific  
23 statement where she has been inconsistent with the document  
24 through her testimony here today. That has to happen before it  
25 can be introduced. He asked a question. It was not drug

1 trafficking and I think that that sort of sums up the basis of  
2 our objection.

3 MR. RICCO: Judge, there are two boxes that have to  
4 be checked and it says, I'm physically -- number 3 says, I'm  
5 physically present in the United States, etc., etc., on account  
6 of drug trafficking. Then it says if yes, explain in detail in  
7 the attached evidence and documents supporting this claim. So  
8 they do. And how they explain it is the drug trafficking.

9 THE COURT: How does she answer that question? I  
10 mean, I am just trying to follow this.

11 MR. RICCO: So then it says on paragraph 9, my most  
12 recent entry was on account of trafficking and that forms the  
13 basis of my claim. If yes, explain the circumstances of your  
14 most recent arrival and she does. She talks about drugs.  
15 That's what it says and it's not me just saying it. I'm  
16 reading from it. It's right here. Ms. "P" was vulnerable to  
17 trafficking --

18 MS. ARGENTIERI: Judge, he's used the witness' name.

19 MR. RICCO: Sorry, Judge. Maria. Thank you,  
20 counsel.

21 Maria was vulnerable to trafficking by this  
22 individual and then it goes onto tell this story, provided by  
23 her, about being forced, threatened, into this in the Dominican  
24 Republic and that it continued when she came to the United  
25 States and that she goes back and forth for the purposes of

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1 drugs and that her presence in the United States today is that.

2 And because of the threats back home that forced her  
3 into this, the applicant is protected. Because it's ongoing  
4 and it was the basis of being here in the first place, she's  
5 allowed to stay in the country.

6 She's not here for asylum because of human  
7 trafficking. She's here with the explanation that the human  
8 trafficking that applies to her case is drug trafficking.  
9 That's what the application is. There's nothing else in this  
10 application.

11 THE COURT: Those questions that you read to me about  
12 drug trafficking is it answered yes?

13 MR. RICCO: She answered no to the question, was your  
14 presence in the United States -- your entry into the United  
15 States for the purposes of trafficking?

16 THE COURT: And she said --

17 MR. RICCO: She said no, I came here because I wanted  
18 to get married.

19 MS. ARGENTIERI: But that's not the question --  
20 Judge, I think this is getting really muddled and am sort of  
21 having a hard time following it but on page 53, the question  
22 that Mr. Ricco wanted to sort of -- pointed me to with the  
23 inconsistent statement, it reads -- and I read this once  
24 before, so I apologize if I am being repetitive, I am  
25 physically present in the United States, etc., on account of

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1 trafficking. It doesn't say drug trafficking.

2 MR. RICCO: It says explain.

3 MS. ARGENTIERI: He didn't -- he doesn't -- and then  
4 she explains how she was human trafficked, not drug trafficked.  
5 And it ends up -- so the title is literally human trafficking.

6 THE COURT: Let me see this.

7 MR. RICCO: Yes, Judge.

8 THE COURT: Now where am I --

9 MR. RICCO: The first page on page 53. Judge, I  
10 think it's page -- sorry, Judge --

11 THE COURT: Okay.

12 (Pause)

13 THE COURT: So the first thing that you asked me to  
14 read was that it says, in part, Ms. Torres has --

15 MR. RICCO: You mean Maria?

16 THE COURT: No, I'm sorry. Mr. Torres, has Maria  
17 learned after coming to the United States was involved in the  
18 international drug trade.

19 MR. RICCO: Right.

20 THE COURT: So she doesn't learn about it until she  
21 comes here. So it's not the purpose of her coming here, at  
22 least as to that.

23 MR. RICCO: As that part. Right. But then as you go  
24 on, you say she learned about it and then she goes back and  
25 then she comes back. And the application covers both entry and

1 most recently entered paragraphs, question 3 and question 9.

2 THE COURT: And the next thing that you circled reads  
3 as follows, "Maria is in the United States on account of  
4 trafficking."

5 MR. RICCO: And it says, "If yes, explain."

6 THE COURT: And then it says, "She is current  
7 residing," wherever she was residing, Maria has not had the  
8 opportunity to depart the United States as she was recently  
9 liberated from her trafficking situation and had been detained  
10 since. Although she left the United States several times after  
11 the trafficking situation began, her trafficker continued to  
12 exercise control over her and she was not free to stay outside  
13 the United States." So what's the problem with that? Tell me.

14 MS. ARGENTIERI: Judge, it's not inconsistent with  
15 what she testified to.

16 THE COURT: How is that inconsistent with what she  
17 testified to?

18 MR. RICCO: Because when I asked her the question,  
19 Judge, she said she is here because she wanted to marry her  
20 husband.

21 THE COURT: I thought that's why she came here.

22 MR. RICCO: That was her response. That was her  
23 previous testimony but that was her response to that question.  
24 Her response to that question is I came here to marry my  
25 husband.



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1 THE COURT: To which I --

2 MR. RICCO: And, Judge, I can --

3 THE COURT: I'm sorry. Which question on this  
4 questionnaire?

5 MR. RICCO: Judge, my questions were directed towards  
6 that box number 3 and that box number 9, those -- the parts  
7 that you're looking at now. That's what they basically are.  
8 And, Judge, I don't have any burning desire to put this  
9 document in evidence. I was just trying to get her to answer a  
10 question and if she is not going to answer the question, then  
11 it's just -- and she's going to be inconsistent about it, then  
12 put the statement in.

13 THE COURT: The question number 3, I am physically --  
14 which is answered yes, I am physically present in the United  
15 States or the Commonwealth of the Marriott Islands, etc., on  
16 account of trafficking and she says yes.

17 MS. ARGENTIERI: But, Judge, that refers -- the  
18 question to her question to the stand was are you here as a  
19 result of drug trafficking, not trafficking generally. And --  
20 and I think your Honor is absolutely right, when -- for Mr.  
21 Ricco to say that he is impeaching her on the why did she come  
22 here question, that was the question asked by Ms. Shihata  
23 either yesterday or two days ago. So that certainly wasn't the  
24 basis for the admission of the document today, as he was  
25 offering it initially. She was asked, why did you come to this

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1 -- like why did you come here initially basically? And she  
2 said to get married.

3 MR. RICCO: No, that wasn't my question.

4 THE COURT: That wasn't a question of -- that wasn't  
5 -- I'm sorry.

6 THE COURT: Well, why don't we do this? Bring Maria  
7 out and why don't you ask the question.

8 MR. RICCO: I will, Judge.

9 THE COURT: I can't do it this way.

10 MR. RICCO: And, Judge, it's a lot easier for me just  
11 to reask the question because we could go back and forth as to  
12 what my questions seemed, might have meant or implied, we'll be  
13 here all day.

14 MS. SHIHATA: We can also go back to the transcript  
15 and see the exact question asked which literally referred to  
16 drug trafficking, your Honor.

17 MR. RICCO: It did because that's what that asylum  
18 application is for.

19 MS. SHIHATA: The question number 3 refers to  
20 trafficking and it does not specific drug trafficking.

21 MR. RICCO: It does.

22 MS. SHIHATA: It's entirely misleading, your Honor.

23 MR. RICCO: It is not entirely misleading. It says  
24 if yes --

25 THE COURT: I don't understand.

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1 MR. RICCO: -- explain.

2 THE COURT: I thought trafficking includes drug  
3 trafficking.

4 MR. RICCO: It does, your Honor.

5 MS. SHIHATA: It certainly --

6 MR. RICCO: And it's misleading for the government to  
7 say that it does not.

8 MS. SHIHATA: To say that she made an inconsistent  
9 statement based on her answer to a specific question about drug  
10 trafficking when the language --

11 MR. RICCO: The witness is in the room.

12 MS. SHIHATA: -- when the language --

13 MR. RICCO: -- the witness is in the room.

14 THE COURT: Let's go.

15 MR. RICCO: -- the witness is in the room.

16 THE COURT: Please. Asked what questions you want.

17 MR. RICCO: Thank you. Judge, can I have copy back?

18 THE COURT: Sure. Sorry.

19 (Continued Cross-examination outside the presence of the jury)

20 CROSS-EXAMINATION CONTINUED:

21 BY MR. RICCO:

22 Q You are aware, are you not that this application was filed  
23 on your behalf to get you protection from the activities that  
24 you engaged in with Deyberto Torres, correct?

25 A I told my lawyer what had happened to me. She put that in

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1 the application as best she could in terms of what she thought  
2 I qualified for. I don't know how many applications she filed.  
3 I know she filed applications.

4 MR. RICCO: Judge, that answer is not responsive to  
5 the question.

6 THE COURT: So what does that mean?

7 MR. RICCO: That means I have to ask her another  
8 question. I'm sorry, Judge.

9 THE COURT: Go ahead.

10 Q You do not want to go back to the Dominican Republic  
11 because you are afraid of Deyberto Torres, correct?

12 A Yes.

13 Q And you say that Deyberto forced you, threatened you,  
14 members of your family, and you gave in and participated in  
15 drug trafficking with him because of that.

16 A Yes.

17 Q And you're afraid that if you go back home, he is going to  
18 get you, hurt you, right?

19 A So I'll continue to pay him his money back, yes.

20 Q Okay. And you filled out an application -- and the money  
21 that you're talking about is in connection with drug  
22 trafficking, right?

23 A Yes.

24 Q Not human trafficking, right?

25 A I don't know.

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1 Q You just know the debt is for drug trafficking, right?

2 A I know the debt is because I didn't go and pick up some  
3 drugs. That's why I owe the money.

4 Q And the thing that you didn't -- that you were supposed to  
5 pick up was drugs, right?

6 A Yes.

7 Q All right. Now your application says that during your  
8 time you've been in this country, you've entered the United  
9 States as a result of, on account of -- excuse me, withdraw the  
10 word result -- on account of drug trafficking. Does your  
11 application say that?

12 A No, I don't know. I came here because of my boyfriend.  
13 Deyberto got in touch with me in 2009, 2010.

14 MR. RICCO: Can I have the question I asked read back  
15 to the witness -- right back to the same spot, Judge?

16 MS. ARGENTIERI: Judge, I think it would be helpful  
17 if maybe there was a time period provided for the entry.

18 (Playback)

19 MR. RICCO: Judge, I will rephrase the question.

20 THE COURT: Wait one second until she gets back on.

21 MR. RICCO: Okay.

22 THE COURT: Okay.

23 MR. RICCO: All right.

24 Q Does your application say that my most recent entry here  
25 in the United States was on account of the trafficking that

1 forms the basis of my claim?

2 A Well, I don't know if that -- I don't know. I -- I don't  
3 know. I told my lawyer what happened. She filed the  
4 applications. So I told her how I first came here to be with  
5 my boyfriend and then Deyberto got in touch with me like after  
6 that. I don't know. I'm not a lawyer. I don't know if I am  
7 eligible for something in human trafficking.

8 Q That wasn't my question but I would like to show you your  
9 application --

10 THE COURT: Go ahead, show it to her.

11 MR. RICCO: Thank you.

12 THE COURT: Should I let the jury go to lunch?

13 MS. ARGENTIERI: I'm sorry, Judge, can I have one  
14 second? There might be a witness that has to leave. I just  
15 want to understand it really quickly. I am sorry.

16 MR. RICCO: Judge, can we have her take a look at it?

17 THE COURT: Do whatever you want.

18 MS. ARGENTIERI: Yeah, I think if you would like to  
19 send the jury to lunch, that makes sense.

20 THE COURT: For how long? You wanted an hour?

21 MS. ARGENTIERI: An hour is fine.

22 THE COURT: It's up to you. I'll take less. I have  
23 to stop today at 5:30.

24 MS. ARGENTIERI: Then an hour is fine, Judge. Thank  
25 you.

1 (Pause)

2 THE INTERPRETER: Counselor, the interpreter just  
3 read item 9 or line 9.

4 MR. RICCO: Okay.

5 Q Is that statement where the box is checked yes, do you  
6 understand the statement?

7 A Yes.

8 Q Is it true?

9 A I did not come here to traffic drugs.

10 MR. RICCO: Your Honor, I move --

11 THE COURT: Can you read the question in English?

12 THE INTERPRETER: My most recent entry was on account  
13 of the trafficking that forms the basis for my claim.

14 THE COURT: And when was this most recent entry that  
15 you're talking about? When did you first come to the United  
16 States?

17 THE WITNESS: In 2008.

18 THE COURT: And that question says your most recent  
19 entry, when would that have been? Most recent from the date of  
20 that application?

21 MR. RICCO: Your Honor, I was just having --  
22 directing the interpreter to the sections of the application  
23 that has the date.

24 THE WITNESS: Oh, okay.

25 THE COURT: Okay, what?

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1 THE WITNESS: Okay, so at this time, I was picking up  
2 drugs.

3 THE COURT: Okay.

4 THE WITNESS: But I didn't come here to --

5 THE COURT: No, but -- listen to me. There are two  
6 separate issues, one is why you came here in 2008. And then  
7 the application talks about subsequent. So from the time --  
8 from 2008 on, you made other trips into the United States from  
9 outside of the United States.

10 THE WITNESS: Yes.

11 THE COURT: And that question asks -- could you read  
12 it to her again -- about your most recent entry?

13 (Interpreter complies)

14 THE WITNESS: Yes.

15 THE COURT: And that was for the purpose of drugs,  
16 the most recent entry.

17 THE WITNESS: Yes.

18 THE COURT: Okay. So --

19 MR. RICCO: So we made progress, Judge, thank you. I  
20 have a few more questions, and I'll be done.

21 THE COURT: So you're not offering this document.

22 MR. RICCO: No, based upon the answers that she  
23 finally gave.

24 THE COURT: Okay.

25 MR. RICCO: When we go back on the record, I'll ask



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1 her the specific questions that you asked. Hopefully she will  
2 give the same answers and then I'll be done.

3 THE COURT: Okay. Are we ready to bring in the jury?

4 THE CLERK: You sent them to lunch.

5 MR. RICCO: I'm ready, Judge.

6 THE COURT: I'm sorry, the jury is out to lunch.

7 MR. RICCO: They went to lunch.

8 THE CLERK: Till 1:45.

9 THE COURT: Until 1:45. I'm sorry we sent them out  
10 because we --

11 MS. ARGENTIERI: That's okay, Judge.

12 THE COURT: -- by the time they come back, we'll have  
13 forgotten the colloquy.

14 MS. ARGENTIERI: That's okay, 1:45.

15 (Discussion concludes at side bar.)

16 (Jury out)

17 (Recess from 12:54 p.m. until 1:52 p.m.)

18 (Jury enters)

19 THE CLERK: Please be seated.

20 CONTINUED CROSS EXAMINATION

21 "MARIA"

22 BY MR. RICCO:

23 Q Good afternoon.

24 A Good afternoon.

25 Q Okay. I want to ask you just a couple of questions about

Cross - "Maria" - Ricco

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1 the asylum petition and then I think we'll be done.

2 Just for clarity with the jury, the asylum petition was  
3 filed so that you would be given an exemption from deportation.  
4 Isn't that correct?

5 A Yes.

6 Q And in support of that application, you were required to  
7 file an affidavit, correct?

8 A Yes.

9 Q And that affidavit was a sworn statement. You know what I  
10 mean by that?

11 A Yes.

12 Q And it was, right?

13 A Yes.

14 Q It also required your lawyer to sign.

15 A Yes.

16 Q All right. Now, you told us about the statements that  
17 were made in support of that application, correct?

18 A Yes.

19 Q And that was information that you gave to the lawyer, I  
20 think that's what you told us.

21 A And the papers that she sent for, from --

22 Q I'm going to get to that, but I'd like to take it one step  
23 at a time if you can.

24 A Okay. Yes.

25 Q I'm going to go back.

Cross - "Maria" - Ricco

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1 THE INTERPRETER: I'm sorry, sir?

2 BY MR. RICCO:

3 Q I'm going to go back. The information about your  
4 involvement in drug dealing was provided by you, correct?

5 A Yes.

6 Q And I'm going to come to the stuff about the paperwork.  
7 I'm not going to leave it out. And the information about the  
8 drug dealing was that you had this \$300,000 debt. That was one  
9 thing, right?

10 A Yes.

11 Q And that you made several trips and transactions. That  
12 was another thing.

13 A Yes.

14 Q And you talked about a long painful relationship that you  
15 had with this Deyberto Torres, correct? I take back the word  
16 relationship. You talked about a person by the name of  
17 Deyberto Torres in connection with your application, correct?

18 A Yes.

19 Q And you said in support of your application, that you were  
20 threatened, one. Right?

21 A Yes.

22 Q You were -- family members had guns put on them.

23 A Yes.

24 Q That you believed, based upon what Mr. Torres told you, is  
25 that he was responsible for burning your family's house down,

Cross - "Maria" - Ricco

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1 correct?

2 A Yes, because he told me that when I separated myself from  
3 him.

4 Q Okay. And we'll get into more. And you also said that he  
5 was a very influential person in Dominican politics, right?

6 A Yes.

7 Q And that he had a corrupt relationship with police and  
8 other people.

9 A Yes, you can look it up on the internet. Now that you  
10 mentioned his name in here so often, look him up on the  
11 internet.

12 Q I'm going to ask you some questions, and would you like to  
13 answer the questions?

14 A Yes.

15 Q Okay. And you talked about, in support of your  
16 application, how you suffered emotionally, correct?

17 A Yes.

18 Q You said that even after you got arrested it was difficult  
19 for you to sleep at the jail, the MCC.

20 A Yes.

21 Q You said that you were crying in the jail, and that you  
22 were depressed.

23 A Yes, because when I got arrested all I could think about  
24 was my father. I was not thinking about the fact that I had  
25 gotten arrested, I was thinking about my father because he had

Cross - "Maria" - Ricco

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1 suffered a thrombosis.

2 Q Okay. And it made you depressed. That's my question. Is  
3 that yes or no?

4 A Yes.

5 Q And that you had gotten therapy at the jail.

6 A It was eight days that I was in (in Spanish) from my  
7 family. I didn't know what had happened to them. Of course I  
8 was going to be. I didn't know what had happened to my father.

9 Q Do you know what the word "therapy" means?

10 A Yes.

11 Q Did you get therapy when you were at the MCC?

12 A Yes. Yes, my roommates called the therapist.

13 Q And --

14 A Because I wouldn't talk to them. I had problems. I  
15 didn't want to talk to anybody.

16 Q Okay. And you said all of this in support of your asylum  
17 application. Isn't that correct?

18 A Yes.

19 Q And this application was prepared by a lawyer other than  
20 Matthew Kluger. Isn't that correct?

21 A Yes.

22 Q All right. While you were in immigration custody, you  
23 also met with another lawyer about filing a law suit.

24 A No, you're wrong. While I was in immigration I was not  
25 visited by any lawyer other than immigration lawyers.

Cross - "Maria" - Ricco

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1 Q Who filed -- who filed the right for you to bring a \$20  
2 million on your behalf? Who filed that?

3 A An attorney, but that was in November. I was in  
4 immigration last year.

5 Q I'm asking you, who was that? Was that yet a different  
6 attorney?

7 A Yes. I just met that lawyer a little while ago.

8 Q Okay. And he filed something on your behalf called a  
9 notice of claim, if you know.

10 A Yes.

11 Q Okay. And that claim was filed in order to preserve your  
12 right to bring a lawsuit as a result of the, what you say  
13 happened to you while you were at the MDC. Correct?

14 A Yes. That's what my lawyer advised.

15 Q Okay. And who came up with the \$20 million figure, you or  
16 the lawyer?

17 A My attorney. When I got there, that number was already  
18 written there.

19 Q And you agreed with it?

20 A Well, I was surprised when I saw that number.

21 Q I'm sure you were.

22 A They're here and they won't let me lie.

23 Q Excuse me?

24 A The lawyer who was talking. The lawyer I'm talking about.

25 Q Is present in the courtroom today?

Cross - "Maria" - Ricco/Direct - Vasquez - Argentieri

434

1 A Yes.

2 Q Okay. And you were surprised that the lawyer wanted \$20  
3 million?

4 A Yes, he said that we could discuss the amount.

5 Q Well, first I wanted to ask you what -- that you said you  
6 were surprised.

7 A Yes.

8 Q All right. Thank you.

9 MR. RICCO: I have no further questions.

10 MS. SHIHATA: The Government has no further questions  
11 for this witness.

12 THE COURT: Okay. Call your next witness.

13 MS. ARGENTIERI: The Government calls -- Judge, may I  
14 just wait for the witness to leave?

15 The Government calls Melva Vasquez.

16 M E L V A V A S Q U E Z,

17 called as a witness, having been duly sworn, was examined  
18 and testified as follows.

19 THE COURT: You can put your hand down.

20 MS. ARGENTIERI: May I, Judge?

21 (Testimony through a Spanish interpreter.)

22 DIRECT EXAMINATION

23 BY MS. ARGENTIERI:

24 Q Can you state and spell your name for the record?

25 A Yes. Melva E. Vasquez Vargas.

Direct - Vasquez - Argentieri

435

- 1 Q How old are you?
- 2 A Thirty.
- 3 Q Where were you born?
- 4 A The Dominican Republic.
- 5 Q How far did you go in school?
- 6 A Eleventh.
- 7 Q Is that 11th grade?
- 8 A I'm sorry?
- 9 Q Did you mean 11th grade?
- 10 A Yes.
- 11 Q Okay. When did you move to the United States?
- 12 A 2007.
- 13 Q When you moved to the United States, did you come here
- 14 legally?
- 15 A Yes.
- 16 Q When you moved here, what did you do for a living?
- 17 A I worked in several different factories.
- 18 Q What kinds?
- 19 A There was one that was a makeup factory, one that was a
- 20 factory for packing jewelry, cleaning, and that's it.
- 21 Q Are you working now?
- 22 A Yes.
- 23 Q What do you do?
- 24 A I work in a kitchen, in a restaurant.
- 25 Q What do you do there?



Direct - Vasquez - Argentieri

436

- 1 A I'm a cook.
- 2 Q How old were you when you came to the United States?
- 3 A Nineteen, going on 20.
- 4 Q Directing your attention to 2011, what happened?
- 5 A I was arrested.
- 6 Q Did you plead guilty in your case?
- 7 A Yes.
- 8 Q What did you plead guilty to?
- 9 A Something like trafficking a substance, drugs.
- 10 Q Was it a drug conspiracy?
- 11 A Yes.
- 12 Q And were you sentenced?
- 13 A Yes.
- 14 Q What were you sentenced to?
- 15 A A year and a day.
- 16 Q Now, was your case a federal case or a state case?
- 17 A Federal.
- 18 Q In what prisons did you serve your jail sentence?
- 19 A The jail that's in Brooklyn. They call it MDC,
- 20 Metropolitan something.
- 21 Q How long were you incarcerated inside the MDC?
- 22 A Eleven months. Eleven months and something.
- 23 Q Okay. And from approximately when to when?
- 24 A February to December.
- 25 Q In what year?

Direct - Vasquez - Argentieri

437

1 A 2015.

2 Q During your incarceration at the MDC, how many units were  
3 there for federal -- I'm sorry, for female prisoners?

4 A Two.

5 Q And how were the units different, if at all?

6 A They were different. There was one for sentenced women  
7 and the others were awaiting their sentence.

8 Q Which one were you in?

9 A In the one where the sentenced inmates were.

10 Q And during your time at the MDC, what jobs were women able  
11 to have?

12 A They worked in the kitchen, they worked in cleaning, in  
13 the laundry, and cleaning the unit.

14 Q Now, the women that worked in the kitchen, what were the  
15 hours for them?

16 A At 11:00 at night, and 4:00, or 5:00, or 6:00 a.m.,  
17 depending on when our work was done.

18 Q So they basically work through the night?

19 A Yes.

20 Q When you were at the MDC, what inmates were you closest  
21 to?

22 A I had some friends who were named.

23 Q Go ahead.

24 A Danilda, Maria, Kiara. They were the ones I knew the  
25 best.

Direct - Vasquez - Argentieri

438

1 Q Now, when you say Maria, are you referring to someone  
2 whose name is not actually Maria?

3 A Yes.

4 Q Are you referring to her that way because I previously  
5 asked you to use the name Maria instead of her name?

6 A Yes.

7 MS. ARGENTIERI: Judge, may I approach? I'm showing  
8 the witness only, Government Exhibit 2A.

9 THE CLERK: Microphone.

10 MS. ARGENTIERI: Oh, government -- I'm showing the  
11 witness only, Government Exhibit 2A.

12 THE WITNESS: Yes.

13 BY MS. ARGENTIERI:

14 Q Is that a photograph of the person you described as Maria,  
15 with her real name that you know under it?

16 A Yes.

17 MS. ARGENTIERI: Judge, may I publish it only to the  
18 jury by holding it up in front of them?

19 THE COURT: Yes.

20 BY MS. ARGENTIERI:

21 Q Starting with Maria, where was Maria from?

22 A The Dominican Republic.

23 Q What language did she speak?

24 A Spanish.

25 Q What if any English did she speak?

Direct - Vasquez - Argentieri

439

1 A She understood a little, she spoke a little, but really  
2 little.

3 Q When you got to the MDC, was Maria already there?

4 A No.

5 Q When did she get there?

6 A Some months later.

7 Q What if any job did Maria have while you were at MDC?

8 A Cleaning.

9 Q Do you know if any other inmates cleaned with Maria?

10 A Yes.

11 Q Who?

12 A There was an older woman by the name of Carmen Lopez,  
13 Odie. Other people, but I don't know their names.

14 MS. ARGENTIERI: I'd like to show the witness what's  
15 in evidence as Government Exhibit 4.

16 Oh, I'm sorry. My screen isn't on. Thank you,  
17 Lauren.

18 BY MS. ARGENTIERI:

19 Q Can you see that?

20 A Yes.

21 Q Who is that?

22 A Danilda.

23 Q What if any nicknames did Danilda have?

24 A Nani.

25 MS. ARGENTIERI: And I wasn't sure, is it up on the

Direct - Vasquez - Argentieri

440

1 juror's screens as well?

2 THE CLERK: It should be.

3 MS. ARGENTIERI: I'm sorry. I move to publish it.

4 It's in evidence. Thank you.

5 BY MS. ARGENTIERI:

6 Q You said her nickname was Nani?

7 A Yes.

8 Q Where was Nani from?

9 A The Dominican Republic.

10 Q What languages did Nani speak?

11 A English and Spanish.

12 Q What if any job did Nani have at the MDC?

13 A In the kitchen.

14 Q She was one of the inmates that worked at -- worked at  
15 night, as you described, after 11:00 p.m.?

16 A Yes.

17 Q I'm going to show you Government -- show everyone,  
18 Government Exhibit 5 in evidence. Who is that?

19 A Melva. Me.

20 Q Okay. Do you speak any English?

21 A No. I understand a little.

22 Q What if any job did you have at the MDC?

23 A I worked in the kitchen.

24 Q The same as Nani?

25 A Yes.

Direct - Vasquez - Argentieri

441

1 Q Now, once you were assigned to work, what was your  
2 understanding of whether you could refuse to go?

3 A No.

4 Q Can you explain?

5 A If you had asked for a job, you couldn't say, no, I'm not  
6 going to work. They could write you up or something. I don't  
7 know what else.

8 Q And during your time at the MDC, you said you worked?

9 A Yes.

10 Q How many times did you work a week?

11 A Every, except for -- every day. We had two days off.

12 Q How much money did you make a month for your work?

13 A Twenty, 18. It never went above \$25. It would depend.

14 Q And that's per month?

15 A Yes.

16 Q Showing you Government Exhibit 6. Who is that?

17 A Kiara.

18 Q Do you know Kiara's full name?

19 A No.

20 Q She was one of your friends?

21 A Yes.

22 Q Where was Kiara from?

23 A Puerto Rico.

24 Q What languages did she speak?

25 A English and Spanish.

Direct - Vasquez - Argentieri

442

- 1 Q What if any job did Kiara have?
- 2 A None at all.
- 3 Q How long was Kiara at MDC?
- 4 A I don't know exactly, but not for too many months. A few
- 5 months.
- 6 Q You said that Maria cleaned with someone named Odie?
- 7 A Yes.
- 8 Q I'm showing you Government Exhibit 8. Who is that?
- 9 A Odie.
- 10 Q You also mentioned a woman, Carmen Lopez. Is that right?
- 11 A Yes.
- 12 Q During your time at the MDC did Carmen Lopez leave?
- 13 A Yes.
- 14 Q And after Carmen Lopez left, who did Maria clean with?
- 15 A With Odie and a few other people.
- 16 Q And where was Odie housed?
- 17 A In the same unit.
- 18 Q Where was Odie from?
- 19 A The Dominican Republic.
- 20 Q What language did Odie speak?
- 21 A Spanish, and she understood a little English.
- 22 Q When you were incarcerated in the MDC, who was in charge
- 23 of the inmates?
- 24 A I don't know. What do you -- could you repeat that?
- 25 Q Who was in charge of the inmates in the jail?

Direct - Vasquez - Argentieri

443

- 1 A The counselor, but I don't know his name.
- 2 Q Okay. What about the guards?
- 3 A Uh-huh. The guards, lieutenants.
- 4 Q And what if anything could they tell you to do?
- 5 A Well, yes, they could. They could make you do things,
- 6 tell you to do things.
- 7 Q Okay. And who was in charge of discipline?
- 8 A The lieutenants. And whatever guard was on duty then,
- 9 could give out discipline.
- 10 Q And the guard that was on duty, where did they stay in the
- 11 unit?
- 12 A In his office and he would make rounds in the unit every
- 13 once in a while.
- 14 Q When you were at the MDC, did you receive visits?
- 15 A Yes.
- 16 Q And did they stop at some point?
- 17 A Yes.
- 18 Q Why?
- 19 A Because supposedly some guard who was watching,
- 20 surveilling, I was apparently doing something sexual. I don't
- 21 know how, but I was taken out of the visiting room and they
- 22 were taken from me.
- 23 Q When did this happen?
- 24 A End of May, beginning of June.
- 25 Q Is this in -- what years is this? Remind me.



Direct - Vasquez - Argentieri

444

- 1 A 2015.
- 2 Q And you said you were in the visiting room?
- 3 A Yes.
- 4 Q And you were taken out?
- 5 A Yes.
- 6 Q And what did you learn that you were getting in to trouble
- 7 for?
- 8 A I had, for that reason, I was doing something sexual. But
- 9 they apparently never checked the cameras on both sides to see
- 10 whether or not that was true.
- 11 Q Had you done something?
- 12 A No.
- 13 Q And were you disciplined?
- 14 A Do you mean, did I get a punishment?
- 15 Q Yeah, were you punished?
- 16 A Yes.
- 17 Q What happened?
- 18 A They took away six months of family visits.
- 19 Q When you first were taken out of the visiting room, where
- 20 were you brought?
- 21 A To a punishment cell.
- 22 Q What is that called in the MDC?
- 23 A SHU.
- 24 Q You said SHU?
- 25 A Yes.

Direct - Vasquez - Argentieri

445

- 1 Q How long were you held in the SHU?
- 2 A For almost a little over two weeks.
- 3 Q When you were in the SHU could you receive visits?
- 4 A No.
- 5 Q When you were in the SHU, did you have any of your stuff
- 6 with you that you had back in the unit?
- 7 A No. It was limited.
- 8 Q And were -- when you were in the SHU, how often did you
- 9 get brought out?
- 10 A You didn't. They can't take you out because you stay
- 11 right there.
- 12 Q Eventually, were you returned to the unit?
- 13 A Yes.
- 14 Q What does the SHU cell look like?
- 15 A It's small, really small. You can't see anything.
- 16 There's nothing there. A bed, a toilet, that's it.
- 17 Q Do you get any recreation while you're in the SHU?
- 18 A Well, you only get taken out for about a half hour, but
- 19 you go from one cell to another.
- 20 Q For how long did you lose visits?
- 21 A Six months.
- 22 Q Was that hard for you?
- 23 A A lot. Very.
- 24 Q In what month did you start receiving visits again?
- 25 A In December.

Direct - Vasquez - Argentieri

446

1 Q When in relation to when you were leaving the MDC?

2 A Yes.

3 Q Was it just before you were scheduled to be released from  
4 MDC?

5 A Yes.

6 Q Now, what happened the first time that someone came to try  
7 to visit you in December?

8 A My visits still hadn't been authorized.

9 Q So what happened then?

10 A They didn't let her through.

11 Q When were you allowed to have a visit in relation to that?

12 A The next day.

13 Q Now, do you know if the person who tried to visit you when  
14 you couldn't have the visit actually came to the jail?

15 A Did she go to the jail?

16 Q Like, did she try to come to the jail for the visit?

17 A Of course. It was a day that I was waiting for that day.

18 Q Okay. Now, on the day you actually had the visit, did you  
19 return to the unit after the visit?

20 A Yes.

21 Q How were you feeling?

22 A Happy.

23 Q When you got back to the unit, what if anything happened?

24 A I came across one of my friends and she was crying because  
25 of something that had happened to her.

Direct - Vasquez - Argentieri

447

1 Q Which friend?

2 A Maria.

3 Q How did she look?

4 A She was crying. It looked like she had been crying for a  
5 while. And she told me that something had happened to her.

6 Q What did she tell you had happened to her?

7 A That she had been with somebody, she had had -- she had  
8 had sex with a man from there.

9 Q What if anything did she say about who it was?

10 A She did, she did say who it was.

11 Q Who?

12 A A lieutenant by the name of Martinez.

13 Q When you spoke with Maria that day, where were you?

14 A At Nani's bed.

15 Q Did you talk to Maria on Nani's bed, and then several  
16 times after that?

17 A Yes.

18 Q When you got to Nani's bed, who was there?

19 A Danilda, Nani was there, Kiara, me, Maria.

20 Q When you got there, was everyone else -- had they already  
21 been talking about it?

22 A Well, we were there, yes. We all went there to talk.  
23 Danilda was there, Maria was there.

24 Q What did Maria say about what had happened to her?

25 A What she said happened to her was that she had sex with

Direct - Vasquez - Argentieri

448

1 that man, she had bled. He hadn't used protection. I don't  
2 know. Those things.

3 Q Beyond that, did she get into -- well, just taking what  
4 you're saying in pieces, when she said that he hadn't used  
5 protection, what did you understand that to mean?

6 A I understood that he had sex with her. He didn't protect  
7 himself. You know, like the word, he didn't use a condom.

8 Q What if anything did she say she asked him to do?

9 A I don't understand.

10 Q Okay. How long did you talk about it at Nani's bed?

11 A Not long. A short time.

12 Q How were Kiara and Nani acting when you were talking about  
13 it at Nani's bed?

14 A They were normal. They were relaxed, listening.

15 Q Were they taking it seriously?

16 A Normally, but like as a joke because women who were in  
17 prison didn't have to take things like that seriously.

18 Q What do you mean?

19 A I don't know why they took it, they didn't take it  
20 seriously, or why there were so -- why they took it like so  
21 easily.

22 Q Is that how you reacted?

23 A No.

24 Q Were you upset?

25 A Yes. I was angry because for them, that might have been

Direct - Vasquez - Argentieri

449

1 normal, but for me those things are not normal.

2 Q After you spoke about this on Nani's bed, did there come a  
3 time when you spoke about it again?

4 A Yes.

5 Q What else, if anything, did Maria tell you?

6 A We talked about everything that happened. After that we  
7 went out for the count. We were out in the hall for a short  
8 time, we relaxed a little bit, and then everybody went to their  
9 bed.

10 Q When you had this other conversation about it, what if  
11 anything did Maria say about where this had happened?

12 A She said it happened in the man's office. She was -- he  
13 was there and he had a camera so that he could check and see  
14 whether or not someone was coming.

15 Q What if anything was Maria worried about at that point?

16 A She was worried about something. She was worried because  
17 he didn't use protection and because she could get pregnant.

18 Q Now when Maria told you about what had happened, did you  
19 know the person she was talking about?

20 A Yes.

21 Q Had you ever seen him in the facility before?

22 A Yes.

23 Q How many times?

24 A Very few times.

25 Q And --

Direct - Vasquez - Argentieri

450

1 A Not many times. I wasn't really accustomed to seeing him  
2 that many times.

3 Q Now what happened next?

4 A What happened? Like what?

5 Q When did you next discuss this with Maria?

6 A After the count we kept talking.

7 Q Okay. Now, on the night that this happened, did you go to  
8 work?

9 A Yes.

10 Q And when you got back from work, what if anything did  
11 Maria show you?

12 A She showed me a package that she had been brought so that  
13 she could take it. It was a medication.

14 Q What if anything did she say to you about who brought her  
15 the medication?

16 A She said the same man had brought her the medicine so that  
17 she could take it.

18 Q And what exactly did she show you?

19 A She just showed me the packet it came in.

20 Q What did it look like?

21 A It was a small container, not that big. The pill came  
22 inside.

23 Q What did you tell her?

24 A I said she should get rid of that paper.

25 Q Why?

Direct - Vasquez - Argentieri

451

1 A Because a person could get into trouble if on the unit  
2 something was found that didn't belong on the unit.

3 Q How could they get into trouble?

4 A They could be punished.

5 Q For what?

6 THE INTERPRETER: I'm sorry, counselor, I didn't hear  
7 the question.

8 MS. ARGENTIERI: I'm sorry. I wasn't looking at you,  
9 that's why.

10 BY MS. ARGENTIERI:

11 Q For what?

12 A They could take away anything from us and keep it until  
13 they found out what it was and where it came from, and punish  
14 us.

15 Q After you spoke to Maria, what did she do?

16 A She threw the package in the toilet.

17 Q Where did you see her go?

18 A To the bathroom.

19 Q I'm going to show you -- I'm going to show everyone, okay,  
20 some pictures.

21 This is Government Exhibit 104A. Do you recognize it?

22 A Yes.

23 Q What is it?

24 A It's the unit and the area where the beds are.

25 Q In the unit you were housed in the MDC?



Direct - Vasquez - Argentieri

452

1 A Yes.

2 Q And just to orient the jury, what we're looking at are the  
3 beds, right?

4 A Yes.

5 Q Are there more beds to the right and to the left of these  
6 beds.

7 A Yes.

8 Q I'm going to show you 104B. What does that show?

9 A More beds.

10 Q Now, when you were housed in the MDC, approximately what  
11 row was Nani's bed in?

12 A It was like number 13.

13 Q I'm going to show you 104A. Or, I'm sorry, that was on  
14 104B?

15 A Yes.

16 Q Why would you -- why did you guys meet on Nani's bed?

17 A She was the only one who had a lower bed.

18 Q Everyone else had an upper bunk?

19 A Yes.

20 Q And do you remember where Kiara's bed was?

21 A The first row, number 11.

22 Q So indicating the row all the way to the right in  
23 Government Exhibit 104B?

24 A Yes.

25 Q And so, I'm going to show you 104C. And just to orient

Direct - Vasquez - Argentieri

453

1 the jury, is this photo taken a little bit to the right, as if  
2 you swivel, from where the last photo was taken?

3 A Yes.

4 Q And what does this photo show?

5 THE INTERPRETER: Wait.

6 MS. ARGENTIERI: Sorry.

7 THE WITNESS: Yeah, that's right. Turning to the  
8 right.

9 BY MS. ARGENTIERI:

10 Q Okay. And what does this photo show?

11 A The dining area.

12 Q And in this photo, can you see this silver thing kind of  
13 to the right of the middle of the photo?

14 A Yes.

15 Q What is that?

16 A It's the ice machine.

17 Q And what is next to the ice machine?

18 A The guard's office.

19 Q Showing you 104E, is that a closeup of the ice machine and  
20 the guard's office?

21 A Yes.

22 Q 104D, what is that?

23 A The bathroom, the toilets.

24 Q So, are there showers also over here?

25 A Yes.

Direct - Vasquez - Argentieri

454

1 Q And the common area and everything else is to the right of  
2 this. Is that right?

3 A The area where you can wash, the sinks.

4 Q Okay. So meaning on the right on this photo is the area  
5 where you can wash and the washing machines?

6 A Yes.

7 Q Okay. Now you testified that you left MDC shortly after  
8 this?

9 A Yes.

10 Q After you left MDC, where did you go?

11 A Immigration.

12 Q When you were in immigration, did you see Maria?

13 A Yes.

14 Q And what if anything did she tell you about whether or not  
15 -- what if anything did she tell you about had happened with  
16 the lieutenant?

17 A That she had been with him again, she had been with the  
18 man again. Nothing else.

19 Q How long did you talk about it for?

20 A We talked for a while, but that wasn't the only thing that  
21 we had to talk about.

22 Q Okay. When were you released from immigration custody?

23 A At the end of May.

24 Q What year?

25 A 2016.

Direct - Vasquez - Argentieri/Cross - Vasquez - Ricco

455

1 Q When did you first tell anyone what Maria had told you  
2 about what happened with the lieutenant?

3 A Nobody. I told Christine and Elliott.

4 Q Are you gesturing towards the agent at the government's  
5 table?

6 A Yes.

7 Q Special Agent Christine Doyle?

8 A Yes.

9 Q And is when -- is the first time you told anyone when the  
10 FBI came to see you?

11 A Yes.

12 Q Now, after that, did you receive a subpoena to testify  
13 here today?

14 A Yes.

15 Q Do you want to be here?

16 A No.

17 Q When you realized you were going to have to testify, did  
18 you call Maria?

19 A Yes.

20 Q Why?

21 A I asked her, well why is this situation being  
22 investigated. I was really arguing with her because I didn't  
23 want to be involved. And she, she answered that she wasn't the  
24 one who started it.

25 Q And what did you understand her to be referring to when

Direct - Vasquez - Argentieri/Cross - Vasquez - Ricco

456

1 she said she hadn't started it?

2 A What I thought she meant by starting it was that she  
3 wasn't the one who told them to come to see me.

4 Q Okay. And did you also discuss how angry you were, with  
5 Nani?

6 A Yes.

7 Q Okay. And do you remain friends with them?

8 A Yes.

9 MS. ARGENTIERI: Can I have one moment, Judge?

10 THE COURT: Yes.

11 MS. ARGENTIERI: No further questions.

12 CROSS-EXAMINATION

13 BY MR. RICCO:

14 Q Good afternoon.

15 A Good afternoon.

16 Q I just have a couple of questions to ask. And I want to  
17 start back when you went into custody, you were charged with a  
18 drug offense, right?

19 A Yes.

20 Q Your lawyer was Andres Arranda (ph), right?

21 A Yes.

22 Q And you were facing a 10-year sentence.

23 MS. ARGENTIERI: Judge, objection. This is the basis  
24 of --

25 MR. RICCO: No speaking objections, Judge. Can we

Cross - Vasquez - Ricco

457

1 have a sidebar?

2 THE COURT: We don't need a sidebar. The objection  
3 is overruled.

4 MR. RICCO: Thank you.

5 BY MR. RICCO:

6 Q And you were facing a 10-year minimum, correct?

7 A Yes.

8 Q Okay. But your sentence that you received was a year and  
9 a day, correct?

10 A Yes.

11 Q And your judge was Judge Batts, correct?

12 A Yes.

13 Q And at the time of sentencing, you made a presentation to  
14 the judge. You spoke?

15 A Yes.

16 Q Okay. And you also had gotten safety valve, right?

17 A Yes.

18 Q And before you went to safety valve they asked you to be  
19 honest, right?

20 A Yes.

21 Q And you were?

22 A Yes.

23 Q And you received a very favorable sentence because of it.  
24 Isn't that correct?

25 A Yes.

Cross - Vasquez - Ricco

458

1 Q All right. Thank you. Now, with respect to the MDC, did  
2 -- you were in the women's unit, right?

3 A Yes.

4 Q How many women were in the unit that you were in?

5 A I don't know the exact number. Eighty, a little bit over  
6 80, 90, minimum of 75. I don't know the exact number.

7 Q Okay. But some women have jobs and some don't, right?

8 A Yes.

9 Q Because there are not enough jobs for the number of women  
10 who are there, correct?

11 A Yes.

12 Q Right? And so, but if you decide that you want a job, I  
13 think you said if you ask for a job, you've got to go. Right?

14 A Of course, yes.

15 Q Because the people are depending on you, right?

16 A Yes.

17 Q All right. Now, if you didn't want to work, you don't  
18 have to work, right?

19 A That's not the question that you don't have to.

20 Q Well, there are women who work and have jobs, and there  
21 are women who don't have jobs.

22 A Yes.

23 Q All right. Now, did you say you worked in the kitchen?  
24 It went right past me. I didn't hear it.

25 A Yes.

Cross - Vasquez - Ricco

459

1 Q Okay. And you said, I think you told us some women worked  
2 in the laundry room?

3 A Yes.

4 Q And some -- I'm sorry. And some women worked in the  
5 cleaning units?

6 A Yes.

7 Q If you want to change your unit, let's say you're tired of  
8 the kitchen, can you ask for a job in another place?

9 A Yes.

10 Q Okay. Now all of the things that you told us about Lt.  
11 Martinez were based upon what Maria said to you.

12 A Yes.

13 Q You weren't present for anything that she said happened  
14 between her and Lt. Martinez, correct?

15 A No.

16 Q Okay. But you did tell us that you saw a pill and a  
17 wrapper, and a package, is the word you used.

18 A Yes.

19 Q All right. Can you show us with your fingers how big or  
20 how small that package was, if you remember?

21 A It was something like this. But that was the wrapping.

22 Q Okay. And by the wrapping, you mean the packaging? I  
23 don't want to put words in your mouth.

24 A Yes. The thing it came in.

25 Q Okay. And was it, if you remember, was it cardboard, was



Redirect - Vasquez - Argentieri/Direct - Luna - Shihata 460

1 it foil, was it plastic? Or if you remember.

2 A I don't remember exactly.

3 Q Okay. Prosecution asked you questions about your reaction  
4 that night to what Maria was saying to you. I want to --

5 A Yes.

6 Q Sorry. I want to just take you back there for a moment.  
7 Is it fair to say that you were upset because it just didn't  
8 seem -- look right to you on either person's part?

9 A Yes.

10 Q And you had -- you previously said that, correct? I mean,  
11 you've said that before when you were interviewed by people you  
12 pointed to at the table.

13 A But exactly what? I don't understand.

14 Q That you were upset because things just didn't seem right  
15 to you on either Lt. Martinez's part, or Maria's part, correct?

16 A Yes.

17 MR. RICCO: No further questions. Thank you very  
18 much.

19 REDIRECT EXAMINATION

20 BY MS. ARGENTIERI:

21 Q Just very briefly. If you wanted to change your job, who  
22 would make that decision whether you could or not?

23 A Well, it wasn't a thing, a matter of getting approved to  
24 change your job, like in a week's time they had to check to see  
25 if they could, and then when you came right down to it, they

Redirect - Vasquez - Argentieri/Direct - Luna - Shihata 461

1 didn't do it.

2 Q Who is the they?

3 A The people in charge of the unit, the lieutenant, the

4 counselor, the people who were responsible for that.

5 Q And just to be clear, when Maria showed you the package,

6 was there anything inside?

7 A No.

8 Q So you never saw the pill or anything like that?

9 A No. She had already taken it.

10 Q Thank you.

11 MS. ARGENTIERI: No further questions.

12 MR. RICCO: That's all, Your Honor. Thank you very

13 much.

14 THE COURT: You can step down.

15 (Witness excused.)

16 MS. SHIHATA: The Government calls Isabel Luna.

17 ISABEL LUNA, GOVERNMENT'S WITNESS, SWORN

18 DIRECT EXAMINATION

19 BY MS. SHIHATA:

20 Q Good afternoon. Do you see me over here?

21 A Yes, I do.

22 Q Could you please state and spell your name for the record?

23 A Isabel, I-S-A-B-E-L, Luna, L-U-N-A.

24 Q And, Ms. Luna, who are you employed by?

25 A USAA Federal Savings Bank.

Direct - Luna - Shihata

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1 Q And what is your title at USAA Federal Savings Bank?

2 A Custodian of Records.

3 Q How long have you been a custodian of records for USAA?

4 A Four years.

5 Q And what kind of business is USAA?

6 A Banking and insurance.

7 Q And with respect to the banking side of the business, does  
8 USAA keep certain records in the regular course of its  
9 business?

10 A Yes.

11 Q And do those include account opening documents and  
12 applications for bank accounts and bank statements?

13 A Yes.

14 Q And are those kept in the regular course of USAA's  
15 business?

16 A Yes.

17 Q As a regular practice?

18 A Yes.

19 MS. SHIHATA: May I approach, Your Honor? I'm  
20 showing the witness only what's been marked for identification  
21 as Government Exhibit 218.

22 BY MS. SHIHATA:

23 Q Would you take a moment to look through these documents?

24 (Pause.)

25 Q Prior to your testimony here today, had you reviewed these

Direct - Luna - Shihata

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1 documents before?

2 A Yes.

3 Q And are these documents kept in the regular course of  
4 USAA's business?

5 A Yes.

6 MS. SHIHATA: I move to admit Government Exhibit 218.

7 MR. RICCO: That's without objection, Your Honor.

8 THE COURT: Admitted.

9 (Government Exhibit No. 218 received in evidence.)

10 MS. SHIHATA: Can I publish it to the jury, please?

11 THE COURT: Whenever it's admitted you can publish  
12 it. You don't have to waste time asking me.

13 BY MS. SHIHATA:

14 Q Now, looking at the -- looking at the first page of  
15 Government Exhibit 218, what is this document?

16 A An online application for an account, bank account.

17 Q And where it says, "date received," what is that?

18 A That's the date the application was submitted.

19 Q And what is listed there?

20 A March 22, 2010.

21 Q And where it says, "subject, online application for," and  
22 then lists a number, what is that?

23 A That is the USAA member number.

24 Q And does this document indicate who submitted this  
25 application?

Direct - Luna - Shihata

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- 1 A Yes.
- 2 Q And where does it indicate that?
- 3 A Primary application name.
- 4 Q Is that here, where I'm pointing?
- 5 A Yes.
- 6 Q Primary app name?
- 7 A Yes, ma'am.
- 8 Q And what name is listed?
- 9 A Carlos Martinez.
- 10 Q And is there an address in Brooklyn associated with that
- 11 name?
- 12 A Yes.
- 13 Q And is there a date of birth associated with that name?
- 14 A Yes.
- 15 Q What is the date of birth?
- 16 A November 3rd, 1969.
- 17 Q Is there an email address associated with that --
- 18 A Yes.
- 19 Q -- name? What is that?
- 20 A [Martinez1c@aol.com](mailto:Martinez1c@aol.com).
- 21 Q And what kind of account is this for?
- 22 A Checking.
- 23 Q And what is the account number for this account?
- 24 A 015786098.
- 25 Q Now, going to the third page of Government Exhibit 218,

Direct - Luna - Shihata

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1 what is this?

2 A It's the signature card.

3 Q For what?

4 A For the checking account.

5 Q For the same account --

6 A Yes.

7 Q -- that we just were looking at?

8 A Yes.

9 Q And what do you mean by signature card?

10 A The signature card for the account number ending in 098.

11 Q Is that something you have to send in to open an account?

12 A Yes. It's sent out to the bank and sent back by the -- by

13 the customer, authorizing the account.

14 Q Okay. And this was sent to the customer on what date?

15 A April 22nd, 2010.

16 Q And is there a signature on the bottom?

17 A Yes.

18 Q And what is the date of that signature?

19 A May 29th, 2010.

20 Q I'm looking at the next page, fourth page and the fifth

21 page. What is that?

22 A That's the envelope that USAA sends out to return the

23 signature card back.

24 Q And when it's returned, USAA keeps that as part of its

25 records?

Direct - Luna - Shihata

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1 A Yes.

2 Q Now, looking at the following page, what is this?

3 A It's the bank statement.

4 Q For what time period?

5 A November 19, 2015, through December 27, 2015.

6 Q Now that I've zoomed it in, can you read it again?

7 A Yes. Sorry. November 19th, 2015, through December 22nd,  
8 2015.

9 Q And is this a bank statement for the same account  
10 belonging to Carlos Martinez?

11 A Yes.

12 Q Now, the portion at the top that says deposits and other  
13 credits, what does that mean?

14 A Any type of deposits that are sent in through the -- to  
15 the member's account, such as deposits, ACH deposits, direct  
16 deposits.

17 Q And where it says, "Other debits," what does that mean?

18 A Other debits is any debit card purchases, ACH withdrawals.

19 Q Okay. So there's a debit card associated with this bank  
20 account?

21 A Yes.

22 Q And do the other debit transactions continue on this page?

23 A Yes.

24 Q And again, this is for the same statement period, November  
25 19th, 2015 to December 22nd, 2015?

Direct - Luna - Shihata

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1 A Yes.

2 Q Now, looking at the column that says, "date," what does  
3 that refer to?

4 A That's the date that the -- it's authorized through the  
5 bank.

6 Q And where it says, "amount," what does that refer to?

7 A The amount of the transaction.

8 Q And, "transaction description," what does that refer to?

9 A Where the transaction took place. Either an ATM, either a  
10 store.

11 Q And there's another set of numbers, for example, if you're  
12 looking at the first line of this page, that says, "112215."  
13 What is that?

14 A That is the date that the member went and did the  
15 transaction.

16 Q Okay. So the date of actual purchase --

17 A Yes.

18 Q -- is this date on the right side?

19 A Correct.

20 Q And the date on the left side is, is what in relation to  
21 that?

22 A The day it was author -- it came through the bank, that  
23 the bank authorized it.

24 Q Okay. But the purchase happens on the date on the right  
25 side, correct?



Direct - Luna - Shihata

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1 A Correct.

2 Q Now, I want to direct your attention to page 5 of the bank  
3 statement. Particularly, a transaction that was authorized on  
4 12/14. Do you see that?

5 A Yes.

6 Q And what is the amount of that transaction?

7 A \$74.78.

8 Q And what is the description of that transaction?

9 A Rite-Aid store.

10 Q And is there a store number?

11 A Six -- Store No. 6423, for Brooklyn.

12 Q And what is the date of that actual transaction?

13 A December 13, 2015.

14 MS. SHIHATA: No further questions.

15 CROSS EXAMINATION

16 BY MR. RICCO:

17 Q Good afternoon.

18 A How are you?

19 Q Fine. And you?

20 A Good.

21 Q Just a couple of questions.

22 A Sure.

23 Q The bottom line is that an account holder will have a  
24 card, right?

25 A Uh-hm.

Cross - Luna - Ricco

469

1 Q The card is used somewhere, the transaction is recorded in  
2 the person's bank records, right?

3 A Yes.

4 Q And there's a transaction recorded in Carlos Martinez's  
5 bank records at a Rite-Aid on December 13th, 2015, right?

6 A Yes.

7 MR. RICCO: Thank you.

8 THE COURT: Can the witness be excused? Do you have  
9 any more questions?

10 MS. SHIHATA: I had one more other question.

11 (Pause.)

12 No further questions.

13 THE COURT: Thank you. You can step down.

14 (Witness excused.)

15 THE COURT: Next witness.

16 MS. ARGENTIERI: The government calls Tomas  
17 Rodriguez.

18 TOMAS RODRIGUEZ, GOVERNMENT'S WITNESS, SWORN

19 DIRECT EXAMINATION

20 BY MS. ARGENTIERI:

21 Q Can you state and spell your name for the record?

22 A Yes. Tomas, T-O-M-A-S, Rodriguez, R-O-D-R-I-G-U-E-Z.

23 Q Where do you work, sir?

24 A MDS -- MDC, Brooklyn

25 Q What is your current position there?

Direct - Tomas - Argentieri

470

1 A SIS technician.

2 Q How long have you been employed by the Bureau of Prisons?

3 A I've been working there since 2001, approximately 16  
4 years.

5 Q Where did you grow up?

6 A Puerto Rico.

7 Q Growing up, what language did you speak?

8 A Spanish.

9 Q Is that the language you spoke in school?

10 A Yes.

11 Q You also speak English?

12 A Yes.

13 Q What language are you most comfortable in testifying here  
14 today?

15 A Spanish.

16 Q When did you move to the mainland United States?

17 A 1980.

18 Q And where did you move? What borough?

19 A The county of Brooklyn.

20 Q How far did you go in school?

21 A Three years of college.

22 Q Prior to working for the Bureau of Prisons, what other  
23 jobs did you hold?

24 A I worked for the New York Police Department. I was a  
25 recruit. I also worked for the Freegate Police Department, and

Direct - Tomas - Argentieri

471

1 I also worked for the Criminal Justice Department, CJA in  
2 Brooklyn.

3 Q Remind me what year you started at MDC.

4 A November of 2001.

5 Q And what are the different roles you've had at MDC?

6 A I was a corrections officer and then I had the opportunity  
7 of working as an SIS technician. And then I had two  
8 opportunities of being a temporary lieutenant.

9 Q Meaning that you were temporarily assigned as a lieutenant  
10 in the MDC?

11 A Yes.

12 Q And was that once in 2011 and once in 2015? Do you  
13 remember?

14 A Yes.

15 Q Now when you started off as a corrections officer what, if  
16 any, training did you receive?

17 A The training I got was in policies for the Department --  
18 for the Bureau of Prisons infractions committed by inmates,  
19 firearms training and personal defense.

20 Q Okay. And you've described your position in SIS. What  
21 are your responsibilities in SIS?

22 A I investigate prisoner infractions, I monitor prisoner  
23 calls. I read letters that come into the jail and leave the  
24 jail, and electronic correspondence on the computer.

25 Q Now, you said you monitor calls that come into the jail.

Direct - Tomas - Argentieri

472

1 What phone calls can inmates receive at the MDC?

2 A They can't receive calls.

3 Q Okay. But you said they can make phone calls.

4 A Yes.

5 Q Where are the phones located that inmates can use?

6 A In the units where they're housed.

7 Q And when an inmate wants to make a phone call, after they  
8 lift up the receiver, what do they have to do?

9 A They put in their own special code number, the voice  
10 recognition and then they call.

11 Q And are those calls recorded?

12 A Yes.

13 Q And how long are those calls -- recorded calls kept for?

14 A Six months.

15 Q And then what happens at six months?

16 A The system deletes them.

17 Q What if the call is relevant to an investigation? Is it  
18 deleted?

19 A Yes, if it's not recorded. I'll give you an example.

20 Recorded in the system. The system will record it.

21 Q If you wanted to keep a call for longer than six months,  
22 could you?

23 A Yes.

24 Q All right.

25 A If they have already been recorded.

Direct - Tomas - Argentieri

473

1 Q On the system.

2 A Yes. Yes, there's a difference. If they're not in  
3 evidence and locked. And by locked I mean they're kept in the  
4 system for more than six months.

5 Q So in other words all inmate calls are recorded.

6 A Yes.

7 Q And they're deleted after six months unless they're locked  
8 in the system.

9 A Yes.

10 Q Okay. What information is kept about each call? Like  
11 what details about each call?

12 A What they're talking about or what they're saying.

13 Q Now does the system capture the number that was dialed?

14 A Yes.

15 Q The date and time the call was made?

16 A Yes.

17 Q And the length of the call.

18 A Correct.

19 Q Are inmates aware -- how, if at all, are inmates made  
20 aware that their calls are monitored?

21 A There is a sign up above the phone saying that all calls  
22 are recorded and monitored. Also, when inmates come to the  
23 jail, they are given a form that says that their calls are  
24 recorded and monitored.

25 Q What system do you use to review inmate phone calls?

Direct - Tomas - Argentieri

474

1 A TruPhone.

2 Q Now, who -- what staff members at the Bureau of Prisons or  
3 -- strike that.

4 What staff members at the MDC have the ability to listen  
5 to inmate phone calls?

6 A Everybody.

7 Q Meaning all staff?

8 A All members.

9 Q Does that include corrections officers?

10 A Corrections officers, supervisors.

11 Q Now can you listen to both live and recorded calls?

12 A Yes.

13 Q When a call is monitored what, if any, record is kept that  
14 the call was monitored?

15 A We all have a unique number that starts with a TF and then  
16 our BOP number.

17 Q So, for example -- and when you say "we all," do you mean  
18 staff at the MDC?

19 A Yes.

20 Q What is your TF number?

21 A 14643.

22 Q I'm going to move to something else for a second.

23 A As of December, 2015, how many units within the MDC housed  
24 female prisoners?

25 Q Two.

Direct - Tomas - Argentieri

475

1 A What floor were those unit located on?

2 Q In the East Building on the six floor.

3 A And what was the difference between the two units?

4 Q Six North, as it was known, was for inmates who had not  
5 been sentenced yet and Six South was for the cadres, the women  
6 who had been sentenced.

7 A Now directing your attention to 2015 what, if any, jobs  
8 were female inmates allowed to have within the jail?

9 Q They had several jobs. They worked cleaning. They  
10 cleaned the visiting room. They cleaned the second floor where  
11 the medical area and the lieutenant's office was. They also  
12 worked in the kitchen at midnight.

13 MS. ARGENTIERI: Judge, I'm going to approach.

14 Q I'm showing the witness Government Exhibit 2 in evidence.  
15 Do you know this inmate by name?

16 A Yes.

17 Q I'm showing the witness Government Exhibit 2A.

18 Is this a photo of the same inmate depicted in Government  
19 Exhibit 2 with her name underneath?

20 A Yes.

21 Q Can we agree that for the purposes of your testimony here  
22 today we'll refer to this woman as Maria?

23 A Yes.

24 MS. ARGENTIERI: Judge, I'm just going to publish to  
25 the jury Government Exhibit 2A.



Direct - Tomas - Argentieri

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1 Q Now did you ever interact with Maria?

2 A Yes.

3 Q And when was that?

4 A When I was a lieutenant. And also when I did  
5 investigations in the unit.

6 Q Okay. Putting the investigation piece aside for a second,  
7 when you were a lieutenant what, if any, contact did you have  
8 with Maria?

9 A When I'd walk around the units, when she would come down  
10 to work.

11 Q And when she came down to work, where would she come to?

12 A To the medical area or -- which was right next to the  
13 lieutenant's area.

14 Q What would she be doing down there?

15 A She was cleaning those areas.

16 Q And who did she clean those areas with?

17 A Several inmates. Three to five people.

18 Q And when you were a lieutenant, did you supervise her when  
19 she was cleaning?

20 A All of them, yes.

21 Q And what were your duties and responsibilities when you  
22 were a lieutenant?

23 A Make sure everybody who worked was in position where they  
24 were supposed to be in the units, make sure all of the inmates  
25 were all right.

Direct - Tomas - Argentieri

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1 Q And how would you do that?

2 A I'd walk around the units. If there was anything up with  
3 the inmates, they wanted to talk to me, they could talk to me  
4 if something was going on.

5 Q Is that called doing rounds?

6 A Yes.

7 Q Okay. When you were a lieutenant, did you ever work on  
8 Sunday?

9 A Yes.

10 Q And what was the lieutenant's area like on Sunday?

11 A There would just be me. There was no kind of traffic  
12 there.

13 Q The legal department doesn't work on Sunday?

14 A No.

15 Q And when you were a lieutenant did you have an internal  
16 officer who worked with you?

17 A Yes.

18 Q What were the responsibilities of the internal officer?

19 A They were also involved --

20 THE INTERPRETER: May the interpreter inquire?

21 A They would also walk around the units. They would conduct  
22 counts in the units. They had other responsibilities. They  
23 would escort inmates from the units to the visiting room.

24 Q When Maria worked for you cleaning how were the inmates  
25 brought down to the lieutenant's office area?

Direct - Tomas - Argentieri

478

1 A The internal officer would go to pick them up or we would  
2 go and get them.

3 Q And when she worked for you cleaning, how did she perform?

4 A She would just do her job normally and then she would  
5 leave.

6 Q What language did Maria speak?

7 A Spanish.

8 Q What language did you speak to her in?

9 A Spanish.

10 Q Directing your attention to February of 2016, did you  
11 monitor some of inmate -- some of Maria's calls?

12 A Yes.

13 Q And why were you monitoring them?

14 A I speak Spanish. I understand Spanish a hundred percent. I  
15 like to listen to calls in Spanish.

16 Q And at that time when you started listening to her calls,  
17 what happened?

18 A There was an odd call. She called a friend of hers and she  
19 asked her to do her a favor.

20 Q Now you said she called a friend of hers. Was the friend  
21 a man or a woman?

22 A A friend. A woman.

23 Q And what language was she speaking to the woman in?

24 A Spanish.

25 Q And what language was the woman speaking back in?

Direct - Tomas - Argentieri

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1 A Spanish.

2 Q And as you sit here today, do you recall certain portions  
3 of the call?

4 A Yes.

5 Q What did you remember?

6 A During the call she asked her for a favor, which was to  
7 look up some information about somebody and her friend asked  
8 her if this person was in or out.

9 Q What did you understand -- I'm sorry to stop you.

10 What did you understand her friend to be asking her by  
11 saying in or out?

12 A Was the person inside? In other words, an employee, or if  
13 the person was outside, a friend.

14 Q So inside or outside the prison?

15 A Yes.

16 Q And what did Maria say?

17 A Maria told her that before she got onto his Facebook page  
18 to take away the photographs of the two of them.

19 Q Meaning Maria and the friend?

20 A Yes.

21 Q I think I cut you off before you answered. Did Maria  
22 answer when her friend said inside or outside?

23 A Yes. Inside.

24 Q After she asked her friend to take down the photos of  
25 them, what did she say next?

Direct - Tomas - Argentieri

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- 1 A She started spelling the last name, Martinez. First name,  
2 Carlos. And an initial that I don't remember.
- 3 Q Did that catch your attention?
- 4 A Yes.
- 5 Q Did she spell all the letters in a row?
- 6 A Yes.
- 7 Q And when you heard her spell Carlos Martinez with an  
8 initial, who did you believe that she might be speaking about?
- 9 A The supervisor, Carlos Martinez.
- 10 Q And we'll get back to that in one second. What else did  
11 Maria say, to your recollection, on the call?
- 12 A Find out if he was married. If he was with somebody, a  
13 woman, a girlfriend. Find out.
- 14 Q And how do you know Carlos Martinez?
- 15 A From when I first started working at the Department, at  
16 the Bureau of Prisons.
- 17 Q Looking around the courtroom, do you see him here today?
- 18 A Yes. He's to my right.
- 19 Q Can you identify him using an article of clothing?
- 20 A He's wearing a burgundy colored tie.
- 21 Q Indicating the defendant, for the record?
- 22 A Yes.
- 23 Q At the time that you listened to this phone call, what was  
24 the defendant's position in the jail?
- 25 A Lieutenant.

Direct - Tomas - Argentieri

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1 Q And was he someone you respected?

2 A Yes.

3 Q What different roles did he hold in the jail?

4 A He was responsible for firearms training, the DCT, which  
5 is riot control.

6 Q Within the jail?

7 A Uh-hm. He was also responsible for the SHU.

8 Q Meaning the special housing unit?

9 A Uh-hm.

10 Q What is the SHU?

11 A The SHU is a place where inmates go if they committed an  
12 infraction.

13 THE INTERPRETER: Could the interpreter just have the  
14 witness repeat his answer.

15 A They're taken out of general population and they're sent  
16 there. That's if they've committed an infraction, while  
17 they're being investigated.

18 Q While the inmate is being investigated.

19 A Yes.

20 Q And how long had he worked for the Bureau of Prisons?

21 A Do you mean Lt. Martinez?

22 Q Yes.

23 A Approximately over 20 years.

24 Q And at the time that you listened to this call, did he  
25 have a higher rank than you?

Direct - Tomas - Argentieri

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- 1 A Yes.
- 2 Q What was his rank?
- 3 A Lieutenant.
- 4 Q And what was your rank at the time?
- 5 A I'm just an SIS technician.
- 6 Q Where did the defendant live?
- 7 A In Dayton Manor.
- 8 Q Where is that?
- 9 A As it's known in English, staff housing.
- 10 Q Like a -- I'm not sure if everyone understands what staff
- 11 housing is. Could you just explain that?
- 12 A Yes. It's a building where only people who work for the
- 13 BOP live.
- 14 Q Do you live there?
- 15 A Yes.
- 16 Q Do you know what the defendant's wife does for a living?
- 17 A Yes.
- 18 Q What?
- 19 A Security guard.
- 20 Q Where?
- 21 A At Lutheran Hospital.
- 22 Q Now when you listened to this phone call, where were you?
- 23 A In the SIS office.
- 24 Q And what was your extension at the SIS office?
- 25 A 5129.

Direct - Tomas - Argentieri

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1 Q Can you give the whole number for the record?

2 A 718-840-5129.

3 Q And when you call people what number appears on their  
4 phones?

5 A 718-840-5000.

6 Q After you listened to his call, what did you?

7 A I called Lt. Martinez.

8 Q How did you call him?

9 A His name was on the employee list.

10 Q What phone number did you call him on?

11 A His cell phone.

12 Q Do you recall it as you sit here today?

13 A Not the number.

14 Q When you called -- and when you called -- by the way,  
15 could you have a cell phone in the jail?

16 A No.

17 Q Even as a staff member?

18 A Only the high ranking supervisors.

19 Q But you couldn't.

20 A No.

21 MS. ARGENTIERI: Judge, would this be a good time for  
22 our afternoon break?

23 THE COURT: Yes. Take a short break.

24 (Jury exits.)

25 (Recess from 3:48 p.m. until 3:59 p.m.)



Direct - Tomas - Argentieri

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1 (Jury enters.)

2 MS. ARGENTIERI: May I, Judge?

3 CONTINUED DIRECT EXAMINATION

4 BY MS. ARGENTIERI:

5 Q I'm just going to remind you you're still under oath,  
6 okay?

7 A Yes.

8 Q So immediately after you heard the call you testified you  
9 called Lt. Martinez.

10 A Yes.

11 Q And you said you called him on his cell phone.

12 A Yes.

13 Q Just to clarify, can lieutenants have their cell phone  
14 inside the jail?

15 A No.

16 Q Okay. When you called Lt. Martinez what did you say?

17 A I asked him if he had an initial.

18 Q Now as you sit here today, do you recall the middle  
19 initial?

20 A No.

21 Q Did you know it at the time you made this call?

22 A No.

23 Q At the time you called Martinez?

24 A I didn't know his middle initial. I just knew him as  
25 Carlos Martinez.

Direct - Tomas - Argentieri

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1 Q Right. So you said you called him and you asked him if he  
2 had a middle initial. What happened next?

3 A He said yes, he did have a middle initial -- a middle  
4 name. I told him I had been monitoring a call made by Maria  
5 and he said are you sure? I said yes. So I played him the  
6 call.

7 Q Just to go back for a second, you said you told him that  
8 you had been monitoring a call made by Maria.

9 A Yes.

10 Q At that point what, if anything, did you tell him about  
11 the call?

12 A That she was trying to get information about him on  
13 Facebook.

14 Q And what did Lt. Martinez say when you said that?

15 A Are you sure?

16 Q And then what did you say?

17 A Yes. If you don't believe me, listen to the call.

18 Q And then what did you do?

19 A I let him listen to the call.

20 Q And after you let him listen to the call what, if  
21 anything, did he say?

22 A He said oh, shit. I'm not going to bring these women down  
23 anymore. I don't want problems.

24 Q When he said oh, shit, what did he sound like?

25 A Like surprised. Like scared. I don't know.

Direct - Tomas - Argentieri

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1 Q Now when he said I'm not going to bring those women down  
2 anymore, what did you understand him to mean?

3 A He was not going to bring down the inmates to clean  
4 anymore.

5 Q Now at the time you have this conversation were you aware  
6 one way or another if Lt. Martinez had been bringing Maria down  
7 to clean?

8 A No.

9 Q Now when you were first interviewed by the Government, did  
10 you leave information out?

11 A Yes.

12 Q And when you were first interviewed by the Government, did  
13 you tell the Government that you had, in fact, told Martinez  
14 about the phone call?

15 A Yes.

16 Q Did you, in fact, say that you had not told Martinez about  
17 the call and you had not told Martinez about who the inmate  
18 was?

19 A Could you ask me that question in a different way?

20 Q Sure. When you were first interviewed by the Government  
21 did you say incorrectly that you had not told Martinez about  
22 the call?

23 A Yes.

24 Q Or -- and that you did not tell Martinez who the specific  
25 inmate was?

Direct - Tomas - Argentieri

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1 A Yes.

2 Q And during later meetings did you also not tell the  
3 Government that you had played the call for Martinez?

4 A Yes.

5 Q What were you concerned about?

6 A That I would be called a rat and that I would have  
7 problems at work.

8 Q If you testified -- or if you told the Government about  
9 Martinez.

10 MR. RICCO: Objection. It's a mischaracterization of  
11 what his testimony is.

12 MS. ARGENTIERI: I can re-ask it.

13 THE COURT: Okay.

14 Q Why were you concerned you'd be labeled a rat?

15 A Because I was going to testify against another BOP member.

16 Q What BOP member?

17 A Mr. -- Lt. Carlos Martinez.

18 Q Now at the time that you heard this call, who was your  
19 supervisor?

20 A Geier.

21 Q What's his full name?

22 A Timothy Geier.

23 Q After you spoke to Martinez, what did you do?

24 A I spoke to Mr. Geier about Maria's call.

25 Q And what did you tell him?

Direct - Tomas - Argentieri

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- 1 A That there was an inmate who was trying to get information  
2 from Lt. Carlos Martinez's Facebook page.
- 3 Q What did he tell you to do?
- 4 A To talk to inmate Maria.
- 5 Q Did you speak to Maria?
- 6 A Yes.
- 7 Q Where did you go to speak to her?
- 8 A I went to the East Building, sixth floor.
- 9 Q You went to her unit?
- 10 A I went to her unit and I asked the officer to send her to  
11 the counselor's office.
- 12 Q And did you meet with her in the counselor's office?
- 13 A Yes.
- 14 Q What happened?
- 15 A I asked Maria if she knew the reason why I wanted to talk  
16 to her. She said no. So I said to her you made a call.
- 17 Q And then?
- 18 A Then she started to shake. She got a little emotional. I  
19 asked her if she liked him. She said no.
- 20 Q When you asked her if she liked him, who was the him you  
21 were referring to?
- 22 A Lt. Carlos Martinez.
- 23 Q Prior to this interaction with Maria, what was your  
24 experience with her?
- 25 A She was normal. She was just like any other female

Direct - Tomas - Argentieri

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1 prisoner.

2 Q And what kind of worker was she when she cleaned for you?

3 A Easy going. She did her work and then she went back to  
4 her unit.

5 Q So you said that -- when you said it was about a call she  
6 started to shake.

7 A Yes.

8 Q What happened after you asked her whether she liked him?

9 A I asked her if she liked him. She said no. I told her  
10 she could be sent to the SHU pending an SIA investigation. I  
11 do not handle investigations and infractions between inmates  
12 and staff, if there is an infraction.

13 Q So in other words, if there was an investigation involving  
14 a staff member you wouldn't handle that.

15 A No.

16 Q And you told her that?

17 A Yes.

18 Q And who did you tell her would handle that other  
19 investigation?

20 A So I told her my supervisor, Mr. Geier, the SIA person.  
21 So in English it's special investigator agent. He would handle  
22 the investigation, if there were an investigation.

23 Q And you said that to Maria?

24 A Yes.

25 Q What did you say to her about what your supervisor wanted

Direct - Tomas - Argentieri

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1 to do with her?

2 A Put her in segregation.

3 Q So what did you tell her to do?

4 A I told her to cut the shit.

5 Q What did you mean by that?

6 A That if she kept on acting the way she was, trying to get  
7 information, that could not be done.

8 Q What did she look like when you were talking to her?

9 A Really nervous. She couldn't move. She could hardly walk.

10 Q What did she say?

11 A She wasn't going to -- she was just going to let it go.  
12 She didn't want any problems and she did not want to go to the  
13 hole.

14 Q And when she said the hole, what was she referring to?

15 A The SHU.

16 Q And when inmate are in the SHU what, if any, access do  
17 they have to phone calls?

18 A Once a month.

19 Q What about recreation?

20 A One hour a day.

21 Q What about access to their stuff from their unit?

22 A Limited.

23 Q Based upon your conversation with Lt. Martinez and Maria,  
24 did you think that there was more going on?

25 A It was a possibility, yes.

Direct - Tomas - Argentieri

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1 Q How did you leave it with Maria?

2 A I told her the decision wasn't mine. The decision was my  
3 boss's, Mr. Geier's. If she continued to act like this, trying  
4 to get information, then he would decide to put her in the SHU  
5 pending an SIA investigation.

6 Q Can I ask you what guards work in the SHU?

7 A The ones who are assigned to work in the SHU.

8 Q Do they also work in the rest of the institution?

9 A Yes.

10 Q And so how did you -- what did -- how did you leave it  
11 with Maria?

12 A I told her to go back to her unit. She could hardly  
13 walk. She was really nervous. She was like this at the door.

14 Q Meaning she couldn't even really open the door?

15 A Yes.

16 Q Indicating the witness shook his hand in the air.

17 Based upon your conversation with Maria and her  
18 appearance, did you believe she was being totally honest with  
19 you?

20 A No.

21 Q After you met with Maria, what did you do?

22 A I went to the SIS office and I talked to Mr. Geier.

23 Q What did he tell you to do?

24 A To continue to monitor Maria's calls.

25 Q What did you tell Geier about our conversation with Maria?



Direct - Tomas - Argentieri

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1 A I told him she admitted --

2 THE INTERPRETER: Correction.

3 A I told him she had admitted making the call and there was  
4 nothing between the two of them.

5 THE INTERPRETER: Interpreter correction again. She  
6 had admitted to making the call.

7 Q I'm sorry. And you told him that there was nothing between  
8 the two of them?

9 A Correct. She had admitted to making the call. She didn't  
10 want any problems. She wanted to let everything stay as it  
11 was.

12 Q And what did -- is that all you told Geier?

13 A Yes.

14 Q And what did he tell you to do?

15 A To continue to monitor Maria's calls.

16 Q Did you do that?

17 A Yes.

18 Q And what happened?

19 A She made a call the next day. She spoke to her friend  
20 again. She told her just let it go. I don't want any problems.  
21 I don't know if she mentioned me by name that I had gone to  
22 talk to her. But she said somebody had spoken to her, somebody  
23 had listened to the call. She didn't want any problems.

24 Q How did she sound on the phone?

25 A She was scared, nervous.

Direct - Tomas - Argentieri

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1 Q And after you heard that call, what did you do?

2 A I told Mr. Geier.

3 Q Now, to your knowledge was there an investigation open on  
4 Maria then?

5 A No. I don't know.

6 Q To your knowledge.

7 A No.

8 Q Now when, if ever, did you speak to Lt. Martinez about  
9 that call with Maria again?

10 A I don't remember if it was one or two weeks later. I was  
11 in the East Building. I ran into Lt. Martinez. It was just a  
12 general conversation. I don't know if I asked him or if it just  
13 came in conversation whether or not somebody had tried to  
14 friend him on Facebook.

15 Q And what did he say?

16 A Yes, but he didn't know who it was.

17 Q I'm sorry. What -- yes to what? What did he say to you?

18 A That somebody had tried to friend him on Facebook.

19 Q And when he told you that someone had tried to friend him  
20 on Facebook, what was your understanding of whether that was --  
21 he was relating that to the call between Maria and her friend?

22 A Yes, he was.

23 Q And what did you say to him?

24 A Carlito, report it.

25 Q Who are you telling him to report it to?

Direct - Tomas - Argentieri/Cross - Tomas - Ricco

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1 A SIA.

2 Q And you called him Carlito?

3 A Yes.

4 Q What does that mean?

5 A Well, it's when -- as a Latino you use that when it's  
6 somebody you esteem. It's an affectionate term.

7 Q So you called him an affectionate name?

8 A Yes.

9 Q Did you want to testify here today?

10 A No.

11 MS. ARGENTIERI: No further questions.

12 CROSS EXAMINATION

13 BY MR. RICCO:

14 Q Good afternoon.

15 A Good afternoon.

16 Q I want to ask you a couple of questions and I'd like to  
17 start where the Government left off.

18 There is no question that you, Officer Rodriguez, hold Lt.  
19 Martinez in the highest of esteem at the Bureau of Prisons.  
20 Isn't that correct?

21 A Correct.

22 Q In fact, you're proud of it.

23 A Yes.

24 Q And when you addressed him, you sort of spoke to him in  
25 that way, when you saw him, you ran into him. Isn't that

Cross - Tomas - Ricco

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1 correct?

2 A Do you mean Carlito?

3 Q Yes.

4 A Yes.

5 Q And he had been with the Bureau of Prisons over two  
6 decades. Isn't that correct?

7 A As far as I know, yes.

8 Q And during that time period you never had any conversation  
9 like that at all with Lt. Martinez. Isn't that correct?

10 Meaning --

11 A What do you mean?

12 Q Meaning that some inmate was trying to contact him or  
13 anything like that.

14 A Correct.

15 Q Now when the Government said to you well, when you met  
16 with the Government you didn't tell them about the call, right?  
17 That was the question.

18 A Correct.

19 Q When you had met with the government, that was long after  
20 this event had taken place. Isn't that correct?

21 A Okay.

22 Q The truth of the matter is that you reported that  
23 telephone conversation to your supervisor on the same day you  
24 heard it. Isn't that right?

25 A Sorry. Can you just give that to me again?

Cross - Tomas - Ricco

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1 Q Sure. When you heard the call you reported it to your  
2 supervisor.

3 A Yes.

4 Q And that was the same day that you heard the call. Isn't  
5 that right?

6 A Possibly so.

7 Q Okay. And what drew your attention to the call was that  
8 the call was suspicious, right?

9 A Yes.

10 Q And it was suspicious because of the way in which the  
11 person, first of all, was asking a third party to get in touch  
12 with someone, right? That was the first thing.

13 A Yes.

14 Q With a person who was inside of the jail.

15 A Yes.

16 Q And so the first thing that drew your attention was that  
17 this was somebody -- an inmate who was trying to make third  
18 party contact very dangerous, isn't it?

19 A Correct.

20 Q The next thing that made it suspicious to you is that they  
21 were asking for information, personal information about a  
22 person inside of the jail. Isn't that correct?

23 A Yes.

24 Q The person also said make sure that my picture is not  
25 there when you contact the person's Facebook. That made you

Cross - Tomas - Ricco

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1 suspicious.

2 A Correct.

3 Q The other thing that made you suspicious was the way they  
4 said the name.

5 A Yes.

6 Q Now, can I show you a document and would that help refresh  
7 your recollection of the middle initial that Maria used?

8 A Can you repeat that again?

9 Q As you testified here today, you don't remember the middle  
10 initial that was used, correct?

11 A I don't remember.

12 Q Can I show you a document to see if that helps refresh  
13 your recollection about what the middle initial is?

14 A Yes.

15 Q Thank you.

16 MR. RICCO: I'm approaching the witness with 35TR1,  
17 page 2. One, two, three, fourth paragraph.

18 Q I don't remember the initial.

19 A Okay.

20 Q If you take a look at the paragraph --

21 MR. RICCO: Can the interpreter read the document to  
22 the witness since the witness is testifying in Spanish.

23 THE COURT: My impression is that he can read it in  
24 English himself.

25 MR. RICCO: Then I'll leave it there.

Cross - Tomas - Ricco

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1 THE COURT: If you need help, just ask the  
2 interpreter. You went to college for three years. I assume you  
3 can read English.

4 BY MR. RICCO:

5 Q If I could direct your attention to the last sentence in  
6 that paragraph.

7 A Yes, I know, but I don't remember this.

8 Q Okay. Now you don't have a recollection of what it is,  
9 right?

10 A I don't remember the initial.

11 Q Okay. And -- but you do remember that the name was  
12 spelled out in space, right? In spaces.

13 A Yes.

14 Q And that made you very suspicious.

15 A Yes.

16 Q And you thought about it and you came to the conclusion  
17 that I think these people are speaking about Lt. Carlos  
18 Martinez, right?

19 A Yes.

20 Q Now you told us when you approached Maria and told her  
21 that she got caught, she was shaking.

22 A Yes.

23 Q And she was nervous.

24 A Yes.

25 Q When they were making that call, the one that you

Cross - Tomas - Ricco

499

1 intercepted, did anybody on that call sound nervous or shaky?

2 A No.

3 Q Now at some point you interviewed Maria.

4 A Yes.

5 Q And you interviewed her because your supervisor, SIA  
6 Officer Geier, requested you to, right?

7 A Yes.

8 Q And you went to him because that was your responsibility  
9 to do that, correct?

10 A Yes.

11 Q And that's because you believe that the call involved a  
12 staff member, correct?

13 A Yes.

14 Q And it is Officer Geier's responsibility to direct an  
15 investigation that involves staff, correct?

16 A Yes.

17 Q Now you also told us that when you ran into Lt. Martinez,  
18 you told him hey, report it, right?

19 A Yes.

20 Q You tell every officer to report these things, don't you?

21 A Yes.

22 Q Because they could appear to be not dangerous, but they  
23 could be very dangerous. Isn't that correct?

24 A Yes.

25 Q Because you are aware that inmates have schemed on Bureau



Cross - Tomas - Ricco

500

1 of Prisons staff through the phones, correct?

2 A Yes.

3 Q And like with Officer Abaratti in Puerto Rico it resulted  
4 in his death?

5 MS. ARGENTIERI: Objection. Objection.

6 THE COURT: On what grounds?

7 MS. ARGENTIERI: It's totally irrelevant, Judge.

8 THE COURT: I'll allow it. I didn't understand the  
9 word that you used with the S. Scammed him?

10 MR. RICCO: Schemed.

11 THE COURT: Seemed. What does that mean?

12 MR. RICCO: Schemed.

13 THE COURT: Schemed. What does that mean?

14 MR. RICCO: I'll explain.

15 BY MR. RICCO:

16 Q The inmates get personal information about staff, right?

17 A Yes.

18 Q They find out where they live?

19 A Mm-hmm. Yes.

20 Q They find out about their families?

21 A Yes.

22 Q And Bureau of Prisons officials and correction officers  
23 have been injured and killed as a result of that type of  
24 conduct, isn't that correct?

25 A Correct.

Cross - Tomas - Ricco

501

1 Q And you took it very seriously, didn't you?

2 A Yes.

3 Q One of the things that you did was to call Lt. Martinez  
4 immediately to tell him some people are trying to get personal  
5 information about you?

6 A Yes.

7 Q You were telling him be careful?

8 A Yes.

9 Q And that telling him that had nothing to do with your job.  
10 You were reporting this, weren't you?

11 A Yes.

12 Q You didn't know what was going on and you didn't want to  
13 see him get hurt?

14 A Correct.

15 Q Now when your supervisor told you to meet with Maria, you  
16 did, right?

17 A Yes.

18 Q The first thing she did was try to lie, right?

19 A Not until after the interview. I noticed that there was  
20 probably something more going on, maybe she was hiding  
21 something.

22 Q When you asked her about the call, did she say to you, oh,  
23 I know what call you're talking about? Or did she say what  
24 call?

25 A No.

Cross - Tomas - Ricco

502

1 Q She told you immediately she knew about the call?

2 A She said, yes, I made the call.

3 Q She admitted that she had requested a friend to search for  
4 Lt. Martinez and told you that she wanted to find out if Lt.  
5 Martinez was married?

6 A Yes.

7 Q And when she said that to you -- you're an experienced  
8 investigator, right? You asked her, well, do you like him  
9 [sic]?

10 A Yes.

11 Q She said, no?

12 A Yes.

13 Q She said that she was sorry and that she would not do it  
14 again?

15 A All she said was that she didn't want any problems. She  
16 was just going to let it go.

17 Q Okay. And you had told her that what she had done, that  
18 is, trying to get information on a staff person, could get the  
19 staff person in trouble and her in trouble, isn't that right?

20 A Yes.

21 Q Your supervisor told you to tell Maria to cut the shit?

22 A I told her that.

23 Q Okay. Because that's what it sounded like to you, right?

24 A That if she continued to try to get information like that,  
25 she was going to get into problems.

Cross - Tomas - Ricco

503

1 Q And she's supposed to get into problems if she's doing  
2 that, isn't that correct?

3 A Logically, yes.

4 Q And you thought her asking questions about whether he's  
5 married, and the questions about whether he had pictures of  
6 himself with other women, you thought that there was more to  
7 this than what you were being told, right?

8 A Mm-hmm. Yes.

9 Q All right. I want to go -- now, for example -- well,  
10 withdrawn.

11 Did you discuss with Maria anything about her immigration  
12 situation?

13 A No.

14 Q I want to talk generally about the jail. MDC is a  
15 detention facility under the Bureau of Prisons, isn't that  
16 correct?

17 A Yes.

18 Q You have mostly pretrial detainees?

19 A Yes.

20 Q But also some sentenced defendants?

21 A Correct.

22 Q There are institutional disciplinary rules and an  
23 institutional disciplinary system, isn't that correct?

24 A Yes.

25 Q And without those rules, you could not operate a jail?

Cross - Tomas - Ricco

504

- 1 A Yes.
- 2 Q The inmates have both rights and responsibilities?
- 3 A Yes.
- 4 Q There are -- the inmates have prohibited acts, that is,  
5 things that they are not allowed to do?
- 6 A Yes.
- 7 Q And there are sanctions and penalties for when they  
8 violate those acts?
- 9 A Yes.
- 10 Q The inmates are made aware of the disciplinary rules?
- 11 A Yes.
- 12 Q And they are held accountable to following those rules?
- 13 A Correct.
- 14 Q Inmates in some areas wear uniforms, right?
- 15 A Yes. Mm-hmm.
- 16 Q And I want to ask you a question. In your many years of  
17 experience in corrections, have you ever heard of an inmate  
18 getting six months in the hole for having a button missing?
- 19 A No.
- 20 Q That penalty would far exceed just having a missing  
21 button, isn't that right?
- 22 A Yes.
- 23 Q Six months in the hole means somebody did something to  
24 violate a very serious rule, isn't that correct?
- 25 A Yes.

Cross - Tomas - Ricco

505

1 Q Now the MDC, like all prisons, has a visiting area where  
2 the inmates are allowed the privilege of meeting with their  
3 families and loved ones, right?

4 A Yes.

5 Q The visiting area is one of the greatest threats to  
6 contraband being brought into the prison, isn't that correct?

7 A Yes.

8 Q Because the inmates, along with their families and  
9 friends, they smuggle stuff in the jail through the visiting  
10 area?

11 A That's correct.

12 Q And the visiting area at the MDC has sort of like a bridge  
13 that the Judge is sitting on, it's an elevated post where the  
14 officers can see the rows of tables that are there, correct?

15 A Yes.

16 Q And the visiting area doesn't have just one officer  
17 overlooking that area. There are several officers in that  
18 elevated command space, correct?

19 A Correct.

20 Q And there are officers that walk amongst the rows during  
21 the visiting?

22 A That's correct.

23 Q Inmates have been known to engage in sexual acts in the  
24 visiting area?

25 A Could you ask the question a different way?

Cross - Tomas - Ricco

506

1 Q I'll ask in a different way. A lot of prohibited touching  
2 goes on in the visiting area?

3 A Yes.

4 Q And inmates know they're not supposed to do that, isn't  
5 that right?

6 A Yes.

7 Q Now one of the things that the SHU is, is that sometimes  
8 people are placed in the SHU for their protection, isn't that  
9 correct?

10 A Yes.

11 Q And they are placed there so that they could be out of  
12 harms way?

13 A Correct.

14 Q It's a safe -- it's a safe place, isn't it?

15 A Yes.

16 Q It is the most secure place at the MDC?

17 A Yes.

18 Q Now when you interviewed Maria, did you tell Maria the  
19 following? And I want you to pay attention to my question.  
20 Did you tell Maria promise me you won't tell anyone and I'll  
21 tear up the papers? Did you say anything like that?

22 A No.

23 Q That did not happen, did it?

24 A No.

25 Q That could not happen, could it?

Cross - Tomas - Ricco

507

1 A No.

2 Q When you interviewed Maria and you asked her if she liked  
3 Lt. Martinez, did she say to you Lt. Martinez is a pig?

4 A No.

5 Q You reported the interview with Maria after it happened to  
6 your supervisor, correct?

7 A Yes.

8 Q And you absolutely informed your supervisor of the name of  
9 the BOP staff person that was the subject of the call and the  
10 Facebook search, isn't that correct?

11 A Yes.

12 Q When you were listening to the call, did you get the  
13 impression that the caller was in any kind of stress or  
14 distress?

15 A The first call?

16 Q The first call.

17 A No, she was normal.

18 Q It's the second call after she got caught where you heard  
19 stress in her voice?

20 A Correct.

21 Q But she did what she said she was going to do, isn't that  
22 correct?

23 A Yes. She told me she didn't want to have any problems,  
24 that she was just going to leave everything as it was.

25 Q And when you monitored the second phone call, she told her



Cross - Tomas - Ricco

508

1 friend to stop?

2 A Yes.

3 Q All right. Now during your time in the BOP, are you  
4 familiar with the protocols when an inmate reaches out who says  
5 they've been raped or been sexually threatened? Do you  
6 understand the question?

7 A No.

8 Q All right.

9 A Could you repeat it again?

10 THE COURT: I didn't understand. I didn't understand  
11 what you meant by reaches out.

12 MR. RICCO: I'll rephrase the question.

13 BY MR. RICCO:

14 Q Okay. Sexual contact happens in the jail, correct?

15 A Yes.

16 Q Inmates are prohibited from having sexual contact with  
17 other inmates, correct?

18 A Correct.

19 Q And inmates are prohibited from having sexual contact with  
20 staff, isn't that correct?

21 A Correct.

22 Q There are occasions in the prison when an inmate will say  
23 I'm being sexually threatened?

24 A Yes.

25 Q Help me?

Cross - Tomas - Ricco

509

- 1 A Yes.
- 2 Q The first thing you do when that happens is you try to
- 3 isolate the inmate from the people who he's identified are
- 4 trying to get him, right?
- 5 A Yes.
- 6 Q And that type of action is taken for the protection of the
- 7 inmate, not to punish the inmate?
- 8 A Correct.
- 9 Q That action is usually taken very swiftly, isn't it?
- 10 A Yes.
- 11 Q Because delay could cause an inmate or staff their life,
- 12 isn't that correct?
- 13 A Correct.
- 14 Q Now I know it may seem obvious to you, but a jail is a
- 15 very dangerous place, isn't it?
- 16 A Yes.
- 17 Q The inmates are very closely monitored, isn't that
- 18 correct?
- 19 A Yes.
- 20 Q They don't just get to roam around the jail, right?
- 21 A No.
- 22 Q It would be an impossible situation, wouldn't it?
- 23 A Yes.
- 24 Q The phone calls are monitored, isn't that correct?
- 25 A Correct.

Cross - Tomas - Ricco

510

- 1 Q That's what you do?
- 2 A Yes.
- 3 Q Email and some letters are monitored?
- 4 A Yes.
- 5 Q The inmates constantly come up with ways to get around the
- 6 rules, isn't that correct?
- 7 A Yes.
- 8 Q They use tricks, right?
- 9 A Yes.
- 10 Q Deception?
- 11 A Yes.
- 12 Q Fraud?
- 13 A Yes.
- 14 Q Extortion?
- 15 A Yes.
- 16 Q Violence?
- 17 A That too.
- 18 Q And the threat of violence?
- 19 A That too.
- 20 Q Your job requires you to stay on top of what's going on?
- 21 A Yes.
- 22 Q You've had a lot of interviews with inmates over the
- 23 years?
- 24 A Yes.
- 25 Q You've monitored many hundreds if not thousands of calls?

Cross - Tomas - Ricco

511

1 A That's correct.

2 Q And in your experience, there was nothing about the phone  
3 call or the follow-up interview that gave you the impression  
4 that Maria was in danger, isn't that correct?

5 A Yes.

6 Q If you thought or you sensed that there was a danger, you  
7 would have took action regardless of what she said, isn't that  
8 right?

9 A Yes.

10 Q Often times young inmates are afraid in jail?

11 A Yes.

12 Q And sometimes the staff has to be perceptive to protect  
13 them?

14 A Yes.

15 Q So you're asking her questions, but you're asking her the  
16 questions as a trained investigator, isn't that correct?

17 A Yes.

18 Q Your sense told you that there was more to this story,  
19 right?

20 A Yes.

21 Q But you didn't get one single impression that anybody --  
22 well, that Maria was in any danger, isn't that correct?

23 A No.

24 Q I'm going to ask you a couple of questions about good time  
25 credit and I'm done. And you're familiar generally with good

Cross - Tomas - Ricco

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1 time credit, isn't that correct?

2 A Yes.

3 Q Okay. In your entire career -- in your entire career,  
4 have you ever heard of an inmate losing good time credit  
5 because they were a victim of rape, forced sex or sexual  
6 violence?

7 A No.

8 Q However, an inmate who engages in sexual behavior, even  
9 without force or even without violence, can lose their good  
10 time credit?

11 A No.

12 Q There has to be a hearing?

13 A Yes.

14 Q And if at the end of the hearing there's a determination  
15 that the inmate was involved in inappropriate sexual contact,  
16 they could lose their good time credit?

17 A Yes.

18 Q That's a part of the Bureau of Prisons' disciplinary  
19 rules, isn't that correct?

20 A Yes.

21 Q And you, as an SIS officer, is an important part of  
22 ensuring that disciplinary rules are followed?

23 A Yes.

24 Q Now on the other hand, sexual contact initiated by staff,  
25 or even if the inmate initiates sexual contact with the staff,

Cross - Tomas - Ricco

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1 that staff person could be subject to anything from demotion,  
2 suspension, termination or even criminal prosecution?

3 A Yes.

4 Q You were concerned here with the phone call and the way in  
5 which this third party contact and search for information was  
6 being set up?

7 MS. ARGENTIERI: Counsel, could you repeat the  
8 question, please?

9 MR. RICCO: I'll rephrase it. It was kind of bad.  
10 Late in the day compounded question.

11 BY MR. RICCO:

12 Q When you first heard the call, you wanted to make sure  
13 that a fellow officer would not be compromising himself and  
14 being ignorant and unaware of what's really going on?

15 A What I want to ask is, if you could explain to me how the  
16 call -- change the question.

17 Q I'll change it. Your concern -- first of all, staff is  
18 not supposed to give the inmates personal information?

19 A That's correct.

20 Q Okay. Very dangerous?

21 A Yes.

22 Q And in this incident, the inmate was getting or wanted to  
23 get the information but they were using a trick?

24 A Yes.

25 Q And your concern was that the Bureau of Prisons' staff

Cross - Tomas - Ricco

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1 person would not fall victim to the trick?

2 A Yes.

3 Q And that's exactly what was going on in that phone call?

4 A Yes.

5 Q Okay. Officer Rodriguez, many years on the force, right,  
6 BOP?

7 A Yes.

8 Q Yes. You have a very high regard for Lt. Martinez, you  
9 told us that.

10 A Yes.

11 Q You see our jury here? Do you see them? Tell them.

12 Would you ever turn your back on an inmate who came to you and  
13 said that they were the victim of a forced or threatened sexual  
14 act? Would you ever do it?

15 A I would never turn my back them, no.

16 Q And it would matter if somebody called you a rat, pig or  
17 bastard, you wouldn't do it?

18 A No.

19 MR. RICCO: Thank you.

20 MS. ARGENTIERI: May I, Judge?

21 THE COURT: Of course.

22 REDIRECT EXAMINATION

23 BY MS. ARGENTIERI:

24 Q If an inmate had come to you and told you that she was a  
25 victim of rape, what would have happened to the inmate?

Redirect - Rodriguez - Argentieri

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1 A She would be taken to segregation, to the SHU.

2 Q Is the SHU also the place that people are sent for  
3 discipline?

4 A Yes. Mm-hmm.

5 Q Same place?

6 A Same place.

7 Q Is it fair to say it's not a pleasant place?

8 A Correct.

9 Q Now you said -- you testified on direct that you're not  
10 involved in investigations involving staff, is that correct?

11 A Correct.

12 Q When have you ever investigated a staff member?

13 A Never.

14 Q Do you have any idea how long it takes?

15 A No.

16 Q When you were East Activities Lieutenant, remind the jury  
17 what your duties and responsibilities were?

18 THE INTERPRETER: Counsel, the interpreter just  
19 didn't get the first part.

20 MS. ARGENTIERI: I'm sorry.

21 Q When you were East Activities Lieutenant, remind the jury  
22 what your duties and responsibilities were?

23 A I was responsible for the East Building making sure that  
24 all officers were at their posts. That everything be safe.  
25 That all inmates be dressed, that they have eaten, that they



1 were okay.

2 Q Is it fair to say it's an important job?

3 A Yes.

4 Q Is it important to pay attention?

5 A Yes.

6 Q Is it a busy job?

7 A Yes.

8 Q Is it fair to say that if you were distracted for a period  
9 of time by raping an inmate that you'd be putting officer lives  
10 at risk?

11 A Of course. Yes.

12 Q Because you wouldn't be paying attention to your job,  
13 right?

14 A Correct.

15 Q That would be the least of it, can we agree?

16 A Yes.

17 Q Okay. You were asked a lot about the phone call and what  
18 you reported to Geier and what you thought?

19 A Yes.

20 Q And you testified on direct that you felt Maria wasn't  
21 being fully honest with you?

22 A Correct.

23 Q And that you thought there was more to the story?

24 A Correct.

25 Q Did you share those suspicions with Geier?

Redirect-Rodriguez-Argentieri/Recross-Rodriguez-Ricco

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1 A No.

2 Q In fact, at the time, you suspected that Maria and  
3 Martinez had some type of inappropriate relationship?

4 A Yes.

5 Q Did you tell that to Geier?

6 A No. Uh-uh.

7 Q Did Geier speak Spanish?

8 A No.

9 Q What language was the call between Maria and her friend  
10 in?

11 A Spanish.

12 Q Did you save that call?

13 A No.

14 Q No further questions.

15 RECROSS EXAMINATION

16 BY MR. RICCO:

17 Q You didn't save the call because you didn't think --

18 MR. RICCO: I'm getting there. I'm sorry. I'm  
19 sorry.

20 Q You didn't save the call because you didn't think there  
21 was a reason to save the call after everything you did, isn't  
22 that correct?

23 A I wasn't -- my boss didn't tell me to save it.

24 Q And the Bureau of Prisons, they erase the calls after  
25 about six months?

Recross - Rodriguez - Ricco

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1 A Not the department, the system.

2 Q The system. But if the call had been saved --

3 MR. RICCO: I'm sorry, Judge.

4 Q If the call had been saved, in that call we would have  
5 heard Maria asking her friend to go on Facebook and find out  
6 information about Lt. Martinez, isn't that correct?

7 A Correct.

8 Q Exactly the way you testified here today under oath?

9 A Yes.

10 Q You weren't trying to hide any information or evidence,  
11 were you?

12 A Nope.

13 Q Now the prosecutor asked you whether or not the SHU was a  
14 pleasant place.

15 A No.

16 Q Can we start from the standpoint that jail, period, is not  
17 a pleasant place?

18 A Correct.

19 Q Now the SHU may not be pleasant, but it's a safe place?

20 A Yes.

21 Q And one of the reasons why you take -- the question was a  
22 rape victim to this unpleasant place is because you could  
23 prevent them from showering and washing away evidence?

24 A No. There are bathrooms there.

25 Q But they take showers in a monitored way, not on their

Recross - Rodriguez - Ricco

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1 own?

2 A Yes. Correct.

3 Q And if a person has said that they've been raped, a  
4 determination could be made as to whether or not a rape kit  
5 would be applied?

6 MS. ARGENTIERI: Objection. Judge, he has no good  
7 faith base to ask that question. It's not correct. I'm sorry.

8 MR. RICCO: It's correct. That's why I'm asking it.

9 THE COURT: Well, the witness will say whether it's  
10 true or not.

11 MS. ARGENTIERI: But, Judge, my concern is it's  
12 creating a misleading impression. Could we approach?

13 THE COURT: No.

14 MR. RICCO: I don't think it's creating a misleading  
15 impression at all.

16 THE COURT: I said you could ask the question.

17 MR. RICCO: Thank you, Your Honor.

18 THE WITNESS: Can you ask it again?

19 BY MR. RICCO:

20 Q Yes. The SHU is a protected place for the benefit of the  
21 inmate, isn't that correct?

22 A Security, yes.

23 Q Yes. If a determination is made that a rape kit would be  
24 applied, that is, to gather physical evidence of the rape, it  
25 could be done in a secure place, isn't that right?

Recross - Rodriguez - Ricco

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1 A The procedure is to contact the medical department. The  
2 inmate is taken to an outside hospital to do that.

3 Q From the SHU?

4 A It doesn't have to be the SHU. It can be wherever she is  
5 under the watch of an officer.

6 Q So that if a person complains that they've been raped,  
7 they can end up going to a hospital instead of the SHU?

8 A First, they do that system, the medical thing first.

9 Q Yes.

10 A Hospital. Then when they come back, they go to the SHU.

11 Q Until the investigation is finished?

12 A Depending on the investigation. She could be transferred  
13 to a different jail.

14 Q That often happens for the inmate's protection, not as a  
15 punishment?

16 A Correct.

17 Q Lastly, you were asked if a staff person is raping  
18 somebody, they obviously aren't doing their job? You said  
19 that's correct.

20 A Of course. That makes sense.

21 Q Of course. Any distraction from your job creates a threat  
22 to security, isn't that correct?

23 A Correct.

24 Q Because things in these jails happen in a heartbeat, isn't  
25 that right?

Further Redirect - Rodriguez - Argentieri

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1 A Yes.

2 Q Thank you.

3 MS. ARGENTIERI: Judge, just one second.

4 (Pause.)

5 MS. ARGENTIERI: Just briefly, Judge.

6 FURTHER REDIRECT EXAMINATION

7 BY MS. ARGENTIERI:

8 Q Mr. Ricco asked you if you were trying to hide  
9 information. At what point, I'm not sure. Do you remember  
10 that?

11 A Yes.

12 Q Isn't it true that when you first met with the Government,  
13 you were, in fact, hiding information?

14 A I was afraid. But the next day I notified you and told  
15 you the truth.

16 Q And then after that, did you continue to hide information  
17 including the fact that you played the call for Martinez?

18 A And then I said I had.

19 Q And did you -- did you finally tell the truth about that?

20 A Yes.

21 Q Why did you initially hide it?

22 A Number one, I was afraid. I didn't want to be called a  
23 rat. I didn't want problems in the institution.

24 Q No further questions.

25

Further Recross-Rodriguez-Ricco/ Direct-Davis-Shihata

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1 FURTHER RECROSS EXAMINATION

2 BY MR. RICCO:

3 Q But you're under oath today and you told the jury the  
4 truth about this entire episode, isn't that correct?

5 A Yes.

6 Q Thank you very much for being here.

7 THE COURT: You can step down.

8 (Witness excused.)

9 THE COURT: Next witness.

10 MS. SHIHATA: The Government calls Derek Davis.

11 (Pause.)

12 THE COURT: Would you raise your right hand.

13 DEREK DAVIS, GOVERNMENT'S WITNESS, SWORN

14 DIRECT EXAMINATION

15 BY MS. SHIHATA:

16 Q Good evening.

17 A Good evening.

18 Q Would you please state and spell your name for the record.

19 A Derek Davis, D-E-R-E-K D-A-V-I-S.

20 Q And, Mr. Davis, who are you employed by?

21 A Rite-Aid.

22 Q And what is your title at Rite-Aid?

23 A Profit Protection Analyst.

24 Q And what does that mean?

25 A Well, basically I just work in the loss prevention

Direct - Davis - Shihata

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1 department and I look through a bunch of reports on customer  
2 transactions and data like that. The moral of the story, I  
3 look for theft within the company and outside the company.

4 Q And does that job involve looking at sales detail records  
5 among other things?

6 A Yes. Yes.

7 Q And how long have you been a profit protection analyst at  
8 Rite-Aid?

9 A Since June 20th of 2016, so a year and a half.

10 Q And during the course of its business, does Rite-Aid keep  
11 certain records as a regular practice?

12 A They do.

13 Q And does that include sales detail records and customer  
14 one view records?

15 A Yes.

16 MS. SHIHATA: I'm going to approach in a moment and  
17 show the witness only what's been marked for identification as  
18 Government Exhibit 214.

19 BY MS. SHIHATA:

20 Q Could you take a look at this exhibit and tell me if you  
21 recognize it?

22 A Yes, I do.

23 Q And prior to your testimony today, have you reviewed this  
24 exhibit?

25 A Yes.



Direct - Davis - Shihata

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1 Q And does this exhibit contain a sales detail record and a  
2 customer one-view record for a particular individual?

3 A Yes, it does.

4 Q And are these documents kept in the regular course of  
5 Rite-Aid's business and as a regular practice?

6 A Yes.

7 MS. SHIHATA: I move to admit Government Exhibit 214.

8 MR. RICCO: That's without objection, Your Honor.

9 THE COURT: It's admitted.

10 (Government Exhibit No. 214 received in evidence.)

11 MS. SHIHATA: I'd like to publish it to the jury.

12 BY MS. SHIHATA:

13 Q Now I'm going to start with the second page of Government  
14 Exhibit 214. What is this page?

15 A This is the customer information pertaining to a  
16 particular Wellness number.

17 Q Okay. And what is a Wellness number?

18 A It's a rewards card that you get at Rite-Aid.

19 Q And what do -- what can you do with that rewards card at  
20 Rite-Aid?

21 A You can get discounts. You can build points that you can  
22 redeem later for -- to get more discounts.

23 Q So are there certain discounts you get on certain products  
24 when you present the card?

25 A Yeah. There's ad discounts. Or if you use it enough, you

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1 get a certain percentage off your sales.

2 Q And you said this is the customer one view for a  
3 particular customer, is that right?

4 A That's true.

5 Q And who is it? Who is the customer?

6 A Carlos Martinez.

7 Q And is there an address associated with the customer?

8 A Yes, there is.

9 Q Can you read it out?

10 A 964 54th Street, Apartment 3F.

11 Q Is that in Brooklyn, New York?

12 A Brooklyn, New York, yes.

13 Q Is there an email address associated with this account  
14 customer?

15 A Yes. Yes, there is.

16 Q And what is that?

17 A Martinezc@aol.com.

18 Q I'm just going to zoom in a little bit. Is that  
19 martinezlc@aol.com?

20 A Yes. Martinezlc@aol.com, yes.

21 Q And is there a phone -- are there -- what is a Plenti  
22 phone?

23 A Well, there's a Plenti program as well that you can enroll  
24 in in conjunction with your Wellness card. That also just  
25 earns points for discounts.

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- 1 Q Okay. So that's like another reward --
- 2 A It's a separate program, yes.
- 3 Q Just make sure we don't talk at the same time, okay,
- 4 because it's being recorded.
- 5 So it's another rewards -- type of rewards program that
- 6 Rite-Aid has?
- 7 A Yes.
- 8 Q And so is this the phone number given by the customer?
- 9 A Yes.
- 10 Q And what is the phone number?
- 11 A 718-490-8719.
- 12 Q And that's the same phone number under Wellness phone?
- 13 A Yes.
- 14 Q And that again is the Wellness Rewards Program?
- 15 A Yes.
- 16 Q And issue date, what does that refer to?
- 17 A That is the issue date for the Wellness card.
- 18 Q And what is listed there?
- 19 A November 6, 2010.
- 20 Q And enrollment date, what is that?
- 21 A That is when he was enrolled in the Wellness card.
- 22 Q And what's listed there?
- 23 A November 6, 2010.
- 24 Q So that -- this date is related to the Wellness rewards
- 25 program, is that correct?

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- 1 A Yes.
- 2 Q And then Plenti enrollment date?
- 3 A That's when he enrolled in the Plenti rewards program.
- 4 Q And that's the second rewards program you were talking
- 5 about?
- 6 A Yes.
- 7 Q Now I'm showing you the first page of Government Exhibit
- 8 204, sorry, 214, what is this page?
- 9 A That is a sales detail page.
- 10 Q And is it for a particular customer?
- 11 A Yes. It's for the 95252803820 Wellness card.
- 12 Q And is that the same -- is that -- the Wellness card
- 13 number that you read out, is that also a -- is that the number
- 14 associated with Carlos Martinez?
- 15 A Yes.
- 16 Q On page 2 of the exhibit?
- 17 A Yes.
- 18 Q Now can you describe what this sales detail record -- what
- 19 as a general matter this shows?
- 20 A This just shows you every product that was bought while
- 21 using that Wellness card. So if you go to the store and you
- 22 use your Wellness card, all the products that you bought during
- 23 those transactions will show up on this report.
- 24 Q Okay. So if you go to Rite-Aid and forget your Wellness
- 25 card or don't use it, they wouldn't show up on this report, is

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1 that right?

2 A That's true.

3 Q Okay. Now I want to direct your attention -- well, let's  
4 start just generally. There's a bunch of columns on this page,  
5 is that correct?

6 A Yes.

7 Q I'm going to zoom in on it just a little bit. But the  
8 column of Date, what does that refer to?

9 A The date of the transaction or the purchase.

10 Q And the Store. There's numbers under where it says  
11 "store." What does that refer to?

12 A That is the store number that it was purchased.

13 Q And does every Rite-Aid store have a number?

14 A Yes.

15 Q Okay. And the Time, what does that refer to?

16 A The time of purchase.

17 Q And is that in Eastern time?

18 A Yes.

19 Q Okay. And then if we go to Account Customer Unmasked,  
20 what is that?

21 A That's the Wellness card that was used to buy those  
22 products.

23 Q Okay. And where it says "item type," what does that mean?

24 A That means it was a sale.

25 Q Okay. And when it says UPC Code, what is that?

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- 1 A That is a particular number, a unique product code for  
2 each product. So each product is assigned a unique code.
- 3 Q Okay. And "item long description," what is that?
- 4 A That is a long description of the item purchased.
- 5 Q And where it says Sales, what is that column?
- 6 A That is the sale price of the item.
- 7 Q And Units, what does that mean?
- 8 A That's the number of units that was purchased.
- 9 Q Where it says Card Discount, what does that mean?
- 10 A That's the discount that was received for using the card,  
11 Wellness card.
- 12 Q And where it says "ad discount," what does that refer to?
- 13 A If there was a discount in the ad that week, by using your  
14 card, you would have received that discount.
- 15 Q And how about "other discount," what does that refer to?
- 16 A Any other discounts available.
- 17 Q And where it says, "extended retail price," what does that  
18 refer to?
- 19 A That's the price of the product before the card discount.
- 20 Q And where it says "cost," what does that refer to?
- 21 A That's the cost for Rite-Aid.
- 22 Q So now I'd like to direct your attention to the first  
23 entry on this page, what is the date listed?
- 24 A December 13th, 2015.
- 25 Q And again is that the date of purchase?

Direct - Davis - Shihata

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- 1 A Yes.
- 2 Q And where it says "store," what number is listed?
- 3 A 10579.
- 4 Q And what Rite-Aid store does that refer to?
- 5 A That's on 6423 Fort Hamilton Parkway in Brooklyn.
- 6 Q Okay. Now if we go to Account Customer Unmasked, again,
- 7 is that the account for Carlos Martinez?
- 8 A Yes.
- 9 Q And if we go to Item Long Description, can you read what
- 10 it says?
- 11 A Plan B, One-Step, one count, over the counter.
- 12 Q And the price?
- 13 A 44.99.
- 14 Q Is that the price he paid for it?
- 15 A Yes.
- 16 Q And how many units?
- 17 A One.
- 18 Q And what was the card discount?
- 19 A Can you slide the paper over a little bit?
- 20 Q Sorry.
- 21 A You're fine. \$5.
- 22 Q Okay. Now does this include -- does this record include
- 23 any sales tax?
- 24 A No.
- 25 Q And was there also another purchase made on the same -- at

Direct - Davis - Ricco

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1 the same date and time reflected in the second row of this  
2 exhibit?

3 A Yes.

4 Q Okay. And also if someone gets cash back at the time of  
5 their purchase, would that be reflected in this document?

6 A No.

7 Q Now is there anything here that indicates whether or not  
8 the item being purchased is a prescription or over the counter?

9 A Yeah. The NDC or UPC code. NDC codes are used for -- to  
10 the right a little bit -- NDC codes are used for prescription  
11 and like prescriptions vaccines and UPCs are pretty much for  
12 everything else. And in that column, you can see they're all  
13 Us. A U denotes a UPC. And if there was an N, that would have  
14 denoted an NDC.

15 Q So U means it's not a prescription product?

16 A Yes.

17 Q It's over the counter?

18 A Yeah. That's an over the counter.

19 Q No further questions.

20 CROSS EXAMINATION

21 BY MR. RICCO:

22 Q Good afternoon.

23 A Good afternoon.

24 Q How are you?

25 A Good. How are you?



Cross-Davis-Ricco/Redirect-David-Shihata

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1 Q Pretty good. You were able to search the Martinez  
2 account, right? And the search of that account, we have one  
3 purchase of a Plan B pill on December 13th, 2015, correct?

4 A Yes.

5 Q That purchase never happens again, right?

6 A I can't say for sure.

7 Q Search for it?

8 A I did not search for it.

9 Q Were you asked to?

10 A No.

11 Q No further -- no further questions.

12 REDIRECT EXAMINATION

13 BY MS. SHIHATA:

14 Q One final question. Government Exhibit 214, does this  
15 relate to a certain time period in December 2015, is that  
16 correct?

17 A That is correct.

18 Q And it shows transactions from?

19 A December 13th through the end of the year.

20 Q No further questions.

21 THE COURT: You can step down.

22 (Witness excused.)

23 THE COURT: I can stay a little late if you have  
24 another witness.

25 THE CLERK: Another short witness?

1 MS. ARGENTIERI: No. Sorry, Judge. Our other  
2 witnesses are longer. And to be honest, I think we let some of  
3 them go because we knew we wouldn't get to them.

4 THE COURT: Okay.

5 MS. ARGENTIERI: Is that a problem?

6 THE COURT: No.

7 MS. ARGENTIERI: Okay.

8 THE COURT: Ladies and gentlemen, we're going to  
9 recess until 10 o'clock tomorrow. We may -- we may, although I  
10 often lie so I hate to say these things, but we may finish  
11 taking all of the evidence tomorrow. If we do, we'll take --  
12 it's the holiday weekend. You'll come back on Tuesday for  
13 summations and deliberations. But don't forget, tomorrow you  
14 have to come back at 10 o'clock.

15 (Jury exits.)

16 (Pause.)

17 THE COURT: Can you come up for a minute?

18 You can all sit down. Or you could leave. You don't have  
19 to stay. I'm talking to the people in the audience.

20 MS. ARGENTIERI: Okay.

21 THE COURT: All right. So how many more witnesses  
22 through tomorrow?

23 MS. ARGENTIERI: I was just going to count that,  
24 Judge. Math isn't my strong suit. Hold on one second.

25 I believe we have nine witnesses left, but a lot of

1 them are not that long. I obviously can't anticipate Mr.  
2 Ricco's cross, but I would think we'd be able to get through  
3 most, if not all of it, of the Government's case tomorrow.

4 THE COURT: Okay. Now I have -- I'm scheduled to  
5 perform a wedding at of one of my former law clerks in the  
6 building -- I mean, I don't have to travel to get there -- at  
7 4:15. Now I don't have to break for the day at that time. If  
8 need be, I can come back.

9 MS. ARGENTIERI: That seems not that much fun for  
10 you, but, okay.

11 THE COURT: You know.

12 MS. ARGENTIERI: Yeah.

13 THE COURT: I'm just letting you know.

14 MS. ARGENTIERI: Okay.

15 THE COURT: And, well, this last witness I thought  
16 could have been disposed of in two minutes. What did the  
17 record show? That he bought, you know, Plan B on December  
18 whatever it is for \$44. Which is a ripoff. I only know this  
19 because I had that case.

20 MS. ARGENTIERI: Okay. Okay.

21 THE COURT: I've always been annoyed at how much they  
22 charge for something that didn't require any research or  
23 development. That's a separate --

24 MS. ARGENTIERI: So tell us about that.

25 THE COURT: No. I ordered them to make it available

1 without a prescription to everyone.

2 Paula, a couple of -- a day or two ago, I don't  
3 remember, Paula told me I met a juror who said something that I  
4 didn't think as consequential and I said, we'll until the end  
5 of the day and you'll put it on the record, but I forgot about  
6 it.

7 THE CLERK: I didn't. You left the bench.

8 THE COURT: Okay.

9 THE CLERK: Juror No. 5 pulled me off to the side  
10 outside of the presence of the other jurors and said that  
11 during jury selection he had mentioned to the magistrate that  
12 he actually sat as a juror on a trial that involved a Dominican  
13 drug trafficking type case somewhere around the neighborhood  
14 where the address was testified to and he wanted to bring that  
15 to my attention.

16 I said thank you. I will bring it to the Court's  
17 attention, and he's not to discuss it with the other jurors,  
18 and he was satisfied with that.

19 MS. ARGENTIERI: I'm sorry. It's late and I'm tired,  
20 but sometime around the address where? Of the MDC?

21 THE CLERK: No. Where Maria testified that she was  
22 supposed to either pick up or -- I wasn't here for all of her  
23 testimony.

24 MR. RICCO: Yes. She gave two places in Washington  
25 Heights.

1 THE CLERK: She testified to an address.

2 MS. ARGENTIERI: Oh, okay.

3 THE CLERK: And he said that was the neighborhood.

4 THE COURT: Well, he said he also said -- disclosed  
5 it to the magistrate during the jury selection.

6 THE CLERK: Yes.

7 THE COURT: I don't know. If you want me to do  
8 something about it, tell me.

9 MS. ARGENTIERI: I think the instruction -- for the  
10 Government, the instruction, you know, not to talk about it  
11 with anyone else seems appropriate. We're not asking for  
12 anything at this time.

13 MR. RICCO: Judge, I'm not asking for anything  
14 further at this time.

15 THE COURT: Okay.

16 MR. RICCO: I'm not.

17 THE COURT: So I'll see you tomorrow at 10 o'clock.

18 MS. ARGENTIERI: Okay.

19 THE COURT: All right.

20 MR. RICCO: All right. Thank you, Judge. Have a  
21 good night.

22 THE CLERK: Have a good evening, all.

23 (Proceeding adjourned at 5:38 p.m.)

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I, LINDA FERRARA, Certified Electronic Transcriber,  
certify that the foregoing is a correct transcript from the  
official electronic sound recording of the proceedings in the  
above-entitled matter.



January 11, 2018

Linda Ferrara, CET-656

I, CHRISTINE FIORE, Certified Electronic Court Reporter  
and Transcriber, certify that the foregoing is a correct  
transcript from the official electronic sound recording of the  
proceedings in the above-entitled matter.



January 11, 2018

Christine Fiore, CERT-410

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